



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 12 जुलाई, 2016 / 21 आषाढ़ 1938

हिमाचल प्रदेश सरकार

स्थानीय लेखा परीक्षा विभाग

अधिसूचना

शिमला—171009, 6 जुलाई, 2016,

संख्या:1-138/72-फिनएल0ए0}खण्ड-8-3873.—हिमाचल प्रदेश के राज्यपाल अपनी प्रदत्त शक्तियों का प्रयोग करते हुए स्थानीय लेखा परीक्षा विभाग हिमाचल प्रदेश में तत्काल प्रभाव से लिपिक वर्ग के दो पदों का उन्मूलन तथा कनिष्ठ कार्यालय सहायक (सूचना प्रौद्योगिकी) के दो नए पदों का सृजन करते हैं। कनिष्ठ

कार्यालय सहायक (सूचना प्रौद्योगिकी) के पद के लिए भर्ती एवं पदोन्नती नियम वही होंगे जो कार्मिक विभाग (नि०-III) द्वारा सूचना संख्या: पीईआर (एपी)-सी-ए (3)-१/2007-I दिनांक 24.12.2014 द्वारा अधिसूचित किए गए हैं।

आदेश द्वारा/—
हस्ताक्षरित/—
प्रधान सचिव (वित्त)।

LOCAL AUDIT DEPARTMENT

NOTIFICATION

Shimla-2, the 8th July, 2016

No. 1-255/74 Fin (LA) Vol-8.—In supersession of this department Notification No. 1-255/74 Fin (LA) Vol-8 dated **12.04.2016**, the Governor, Himachal Pradesh is pleased to promote Shri Vijay Kumar Walia, Assistant Controller (Class-I-Gazetted) Local Audit Department, H.P. on regular basis, who was earlier promoted purely on officiating basis under Next Below Rule, with immediate effect.

Consequent upon the above promotion Shri Vijay Kumar Walia will remain posted for Audit of various institutions of District Kangra and Chamba with Headquarter at Dharamshala.

By order,
Sd/-
Additional Chief Secretary (Finance).

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 05th July, 2016

No: Shram (A) 6-2/2016 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sr.No:	Case No:	Title of the Case	Date of Award
1.	19/2015	Sh. Chamba Ram V/s The XEN, IPH, Division Recong Peo, District Kinnaur.	31-05-2016
2.	25/2014	Sh. Shively V/s -do-	31-05-2016
3.	26/2015	Sh. Jia Lal V/s -do-	31-05-2016
4.	23/2015	Sh. Dev Raj V/S -do-	31-05-2016

5.	25/2015	Sh. Inderpur	V/S	-do-	31-05-2016
6.	20/2015	Sh. Madan Singh	V/S	-do-	31-05-2016
7.	24/2015	Sh. Dharmani	V/S	-do-	31-05-2016
8.	21/2015	Sh. Santi Lal	V/s	-do-	31-05-2016
9.	81/2014	Sh. Guman Singh	V/S Dy. Director of Horticulture, Nahan.		11-05-2016
10.	59/2014	Sh. Jeet Chand	V/S	M/S Patel Engineering Ltd.	18-05-2016
11.	58/2014	Sh Rajvansh Lal	V/S	-do-	18-05-2016
12.	60/2014	Sh. Kuldeep	V/s	-do-	18-05-2016
13.	17/2015	Sh. Rajesh Kumar	V/s	M/S Pyramid Electronics Ltd.	02-05-2016
14.	10/2015	Sh. Onkar Chand	V/s	M/S Cabcom Casble Ltd. Kala Amb, Sirmour.	05-05-2016
15.	14/2011	Sh. Pritam Chand	V/S	M/S Kandhari Beverages Ltd.	20-05-2016
16.	38/2013	Sh. Mohinder Singh	V/S	Conservator of Forest	05-05-2016
17.	62/2015	Sh. Rupinder Singh	V/S	The XEN, IPH Division Shimla.	19-05-2016
18.	27/2010	Sh. Mehar Singh	V/s	M/S Ind. Swift Ltd. Parwanoo.	1-05-2016

By order,
Sd/-
Pr. Secretary (Lab. & Emp.).

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P)

Ref. 19 of 2015.

Instituted on. 9.6.2015.

Decided on 31.5.2016.

Chamba Ram S/o Shri Misar Dass R/o VPO Urni, Tehsil Nichar, District Kinnaur, HP.
. .Petitioner.

Vs.

1. Executive Engineer, IPH Division Reckong Peo, District Kinnaur, HP.
2. Assistant Engineer, Sub Division Nichar, District Kinnaur, HP. . .Respondents.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri G.S Negi, Advocate.

For respondent : Shri H.N Kashyap, ADA.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether non-regularization of the services of Shri Chamba Ram S/o Shri Misar Dass R/o VPO Urni, Tehsil Nichar, District Kinnaur, HP by the Executive Engineer, I&PH Division Reckong Peo, District Kinnaur, HP on completion of 8 years of continuous service as per policy of H.P Government as alleged by the workman is legal nad justified? If not, what relief of regularization and consequential monetary benefits the aggrieved workman is entitled to from the employer?”

2. Briefly, the case of the petitioner is that his services had been regularized by the respondent department w.e.f 2015 whereas he had completed continuous service of eight years in the year, 2002 by completing 180 days in each calendar year as required in tribal area but his services had not been regularized within the prescribed period as mentioned for regularizing the services of daily wager, hence, the respondent had violated the provisions of policy of State Government. It is further stated that the services of junior persons namely Sumitra Devi, Partap and Jagmohan have been regularized by the respondent by ignoring the eligibility and seniority of the petitioner. It is also stated that by regularizing the services of the petitioner after 20 years from the date of his engagement is straightway illegal and even he (petitioner) had made various oral requests to the respondent department for considering more than 19 years services for regularization but his such request was refused by the respondent. Against this back-drop, a prayer has been made that the services of the petitioner be regularized from the date when the junior persons to him became regular with full back-wages and seniority.

3. By filing reply, the respondents had contested the claim of the petitioner wherein preliminary objections had been taken qua barred by limitation, maintainability and that the petitioner failed to fulfill the eligibility for regularization. On merits, it has been asserted that the petitioner has not become eligible for regularization in the year, 2002 as he had not rendered 180 days in each calendar year till the year, 2008. The petitioner has been working continuously by rendering 180 days in each calendar year from the year, 2008 and had completed eight years of service on 31.3.2015, hence, he has been regularized to the post of beldar during the year, 2015 as per instructions of the Government. It is further asserted that the services of the petitioner had been engaged by the department w.e.f. 1.6.1995 but the petitioner had not rendered 180 days in each calendar year from 1996 to 2007 whereas Smt. Sumitra Devi, Pratap and Jagmohan have fulfilled criteria for regularization prior to the petitioner, hence, their services have been regularized. The name of the petitioner has been considered for his regularization as per the instructions of the Government and his services had been regularized after completion of eight years of continuous daily waged service with 180 days in each calendar year. The respondents prayed for the dismissal of the petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 6.1.2016.

1. Whether the non-regularization of the services of petitioner by the respondent on completion of eight years of continuous service as per policy of HP Government is illegal and unjustified as alleged? . .OPP.
2. If issue no.1 is proved in affirmative to what relief of regularization and consequential monetary benefits the petitioner is entitled to? . .OPP.
3. Whether the petition is time barred as alleged? . .OPR.

4. Whether the petition is not maintainable?

. .OPR.

5. Relief.

5. Besides having heard the learned counsels for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Not entitled to any relief.

Issue no.3 No.

Issue no.4 No.

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings

Issues no. 1.

7. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he supported all the averments as stated in claim petition. In cross-examination, he denied that he had not completed 180 days in any calendar year from the year, 1996 to 2007 and that his services for regularization shall be counted from 2008 onwards. He further denied that his services for regularization have been completed on 31.3.2015. He also denied that Ms. Sumitra, Pratap and Jagmohan are senior to him. He admitted that he had been regularized in the department and is continuously working with the department.

8. On the contrary, the respondents examined one Shri Tilak Raj Pathak, Assistant Engineer as RW-1, who tendered in evidence affidavit Ex. RW-1/A wherein he supported almost all the averments as stated in reply. He also tendered in evidence the mandays chart of petitioner Ex. RW-1/B. In cross-examination, he denied that the petitioner had completed 180 days in a calendar year. He denied that the department had not followed the government policy and also violated the mandatory provisions of the policy. He further denied that the petitioner had worked continuously.

9. I have considered the contentions of the learned counsel for petitioner as well as learned ADA for the respondents and also scrutinized the record of the case minutely.

10. After the closer scrutiny of the record, it has become clear that the services of the petitioner have been regularized by the respondent w.e.f. 22.6.2015. The case of the petitioner is that he had completed continuous service of eight years with minimum of 180 days in each calendar year from the date of his initial engagement in the year, 1995 and his services have not been regularized within the prescribed period for regularizing the daily wager by the respondent in violation of the mandatory provisions of the policy of the State Government. It is not disputed that initially the petitioner was engaged in the year, 1995. However, the petitioner has failed to show that he had become eligible for regularization in the year, 2002. The perusal of the mandays chart

of the petitioner Ex. RW-1/B, shows that the petitioner has not completed 180 days (as required in tribal area) in each calendar year w.e.f. the year, 1995 to the year, 2002 except for the year, 1995 rather he completed eight years of continuous service with minimum of 180 days in each calendar year from the year 2008 onwards. As per mandays chart Ex. RW-1/B, the petitioner had completed 239 days in the year, 2008, 360 days in 2009, 349 days in 2010, 333 days in 2011, 338 days in 2012, 344 days in 2013 and 358 days in 2014 as such it cannot be said that the petitioner was eligible for regularization in the year, 2002. From the perusal of the policy of State Government for the regularization of daily waged/contingent paid workers mark C, it is clear that only the services of those daily waged workers could be considered for regularization who have completed eight years of continuous service with a minimum of 240 days (except where specified otherwise for the tribal areas) as on 31.3.2011 against the available vacancies. However, the petitioner had completed requisite period of regularization as per policy in the year, 2015 as per mandays chart Ex. RW-1/B. Hence, it cannot be said that the services of the petitioner have not been regularized in terms of the policy of State Government regarding regularization of daily waged/contingent paid workers.

11. The next contention of the learned counsel for the petitioner is that the services of Smt. Sumitra Devi, Pratap and Jagmohan, who were juniors to the petitioner, have been regularized prior to the petitioner by ignoring his seniority and continuity in service. However, except for the bald statement of the petitioner, no evidence has been led by him that the services of aforesaid persons have been regularized against the policy of the State Government. On the other hand, RW-1 has categorically stated in his affidavit by way of evidence Ex. RW-1/A that Smt. Sumitra, Pratap and Jagmohan had fulfilled the prescribed criteria for regularization prior to the petitioner. Hence, in the absence of any evidence on record, it cannot be said that the seniority and continuity of the services of the petitioner have been ignored.

12. Therefore, in view of my aforesaid discussion, it cannot be said that the nonregularization of the services of the petitioner by the respondent on completion of eight years of continuous service as per policy of State Government is illegal and unjustified. Accordingly, this issue is decided against the petitioner and in favour of the respondent.

Issue No. 2

13. Since, the petitioner has failed to prove issue no.1, this issue becomes redundant.

Issue no. 3

14. The learned ADA for respondents contended that the petition filed by the petitioner is time barred. However, the law on the point is well settled that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The Hon'ble Supreme Court in its various judgments has held that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by the Hon'ble Supreme Court in *in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co operative Marketing –cumprocessing Service Society Limited and Another.* that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

15. Therefore, the aforesaid law declared by the Hon'ble Supreme Court in various context makes the legal position clear that there is no limitation prescribed either under the Industrial

Disputes Act or under the Limitation Act for raising the industrial dispute. The provision of Article 137 of the schedule to the Indian Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no. 4.

16. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 31st day of May, 2016.

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
 TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P)**

**Ref. : 25 of 2014.
 Instituted on : 13.202014.**

Decided on 31.5.2016.

Shivley S/o Shri Damodar Dass C/o Lala Som Prakash & Sons Near HP State Co-operative Bank, Main Bazar Reckong Peo District Kinnaur, HP. . . Petitioner.

Vs.

Executive Engineer, I&PH Division, Reckong Peo, District Kinnaur, HP. . . Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri G.S Negi, Advocate.

For respondent : Shri H.N Kashyap, ADA

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether termination of services of Shri Shivley S/o Shri Damodar Dass C/o Lala Som Prakash & Sons, Near HP State Co-operative Bank, Main Bazar Reckong Peo District Kinnaur, HP by the Executive Engineer, I&PH Division, Reckong Peo, District Kinnaur, HP on the pretext of allegedly attaining the age of superannuation on 30.6.2010 by the above employer whereas as per medical certificate dated 18.9.2012 issued by Chairmancum- Senior Medical Superintendent State Medical Board, DDUZH Shimla HP he was below 45 years during September, 2012 is legal and justified? If not what benefits including re-instatement, amount of back-wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In nutshell the case of the petitioner is that he was initially engaged as daily wager in the year, 1990 by the respondent and worked as such till April, 2010 and thereafter his services were terminated in an illegal and arbitrary manner as no notice as required under Industrial Disputes Act (hereinafter referred to as Act) was served upon him which amounts to violation of section 25-F clause (a) and section 25-N of the Act. It is further stated that the petitioner had completed 240 days in preceding twelve months and had put more than 21 years of service with the respondent. The petitioner repeatedly approached the respondent for his re-engagement but of no avail and thereafter on 8.12.2011, he raised a demand notice on which the respondent had agreed to re-engage the petitioner on production of date of birth certificate if he is found below 60 years. The petitioner submitted his birth certificate to the respondent but without considering the birth certificate of the petitioner, he was asked to appear before the Medical Board for his medical examination upon which he appeared before the Medical Board DDU Hospital Shimla and was duly examined and thereafter the Medical Board issued a medical certificate regarding his age and a copy of which was also forwarded to respondent on 19.9.2012 and as per the medical certificate, the age of petitioner was opined below 45 years. Against this back-drop a prayer has been made for his re-engagement along-with back-wages, seniority and all other consequential service benefits.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability, estoppel and that the claim filed by the petitioner is afterthought and based on menu plated documents. On merits, it has been asserted that the petitioner was initially engaged as daily waged beldar in the year, 1990 and as per his mandays chart, the petitioner left his job on his own during the years, 1990, 1991, 1993 to 1997 and again in the years, 2004, 2005 & 2006 and since as per office record the petitioner has attained the age of 60 years on 30.6.2010, he was not issued further muster roll beyond attaining the age of 60 years under the rules. It is further asserted that the petitioner had never completed the requisite years for his regularization and the junior persons to the petitioner who have completed their continuous qualifying service of eight years, were regularized according to the prevailing government policy. The services of the petitioner were never terminated by the respondent and he has never completed the requisite years for his regularization. The petitioner already completed 60 years as on 30.6.2010 and has also received his retrial benefits i.e gratuity amounting to ` 58442/- It is also asserted that the petitioner at different point of time had submitted various date of birth certificates to the department and in the year, 2010 he submitted a form DPW-Esalary wherein he had mentioned his date of birth as 1950 and thereafter he submitted another certificate issued by Sathaniya Vikas Mantralya, Nepal Government wherein his date of birth has been recorded as 2030/3/30 (Vikrami Samvat) i.e 38 years and even it is also on record that the son of petitioner named Dal Bahadur is also working with the respondent as daily waged beldar and as per record his date of birth is 17.4.1985 i.e 27 years (in 2010), which reveals that the petitioner is only 11 years older to his son which cannot be relied and appears to be fake. The respondent prayed for the dismissal of the petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 24.9.2014.

1. Whether the services of the petitioner w.e.f. 30.6.2010 were terminated illegally in violation of the provisions of the Industrial Disputes Act, 1947 as alleged? . .OPP.
2. If issue no.1 is proved in affirmative to what service benefits, the petitioner is entitled to? . .OPP.
3. Whether this petition is not maintainable as alleged? . .OPR.
4. Whether the petitioner is estopped from filing this petition by his act, conduct etc.? . .OPR.
5. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant.

Issue no.3 No.

Issue no.4 Not pressed.

Relief.

Reasons for findings

Issues no.1.

7. Ld. Counsel for petitioner contended that the petitioner had worked with the respondent as daily waged beldar w.e.f. 1990 till April, 2010 but his services were illegally terminated without complying with the provisions of the Act especially when he had completed more than 240 days in twelve calendar months preceding his termination. He further contended that the respondent without considering the Medical Certificate issued by the Medical Board in which his age is mentioned as 40-45 years, had not issued the muster roll in his favour after April, 2010. He also contended that respondent had retained/regularized juniors to the petitioner which is clear cut violation of the provisions of section 25-G of the Act and also against the principles of “last come first go” and since, the services of the petitioner were terminated in utter violation of the provisions of the Act, he deserves to be reinstated/regularized along-with all the consequential benefits including back wages.

8. On the other hand, learned ADA appearing on behalf of the respondent has contended that the services of the petitioner were never terminated but as per the record since the petitioner had attained the age of superannuation as on 30.6.2010, no muster roll had been issued in his favour after the age of 60 years.

9. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered his affidavit Ex. PW-1/A wherein he supported almost all the averments as stated in the claim petition. He also tendered in evidence the copy of demand notice Ex. PW-1/B, reply to demand notice Ex. PW-1/C and date of birth certificate mark X, medical examination letter mark Y, letter regarding issuance of birth certificate mark Z and medical certificate mark Z-1. In cross-examination, he denied that he had not worked for eight years continuously and that he had not worked w.e.f. 1993 to 1997 and 2004 to 2006. He admitted that gratuity amount of ` 58442/ had been received by him. He denied that he used to leave the work at his choice. He denied that despite issuance of muster roll for June, 2010, he had not worked. He denied that regarding his date of birth, he had submitted a false certificate and that he had attained the age of 60 years.

10. PW-2 Dr. A. Banerjee has stated that he was a member of Medical Board constituted on 18.9.2012 and examined Shir Shivley S/o Shri Damodar Dass who was medically examined for assessment of age and vide assessment mark Z-1, the age of Shivley was assessed as per radiologist below 45 years and clinically above 40 years. In cross-examination, he admitted that he has not brought the original record of mark Z-1 and they have determined the age of Shivley by conducting the Radiological examination. He further admitted that the Radiologist gives his opinion on the basis of ossification of the bones and the age determined by the Radiologist is in the range of 2 to 3 years above or less.

11. On the contrary, the respondent examined one Shri Ankit Bisht, Assistant Engineer, as RW-1, who tendered in evidence his affidavit Ex. RW-1/A wherein he supported almost all the contents as made in reply. He also tendered in evidence authority letter Ex. RW-1/B, birth certificate of the petitioner Ex. RW-1/C and mandays chart of petitioner Ex. RW-1/D. In cross examination, he admitted that initially the petitioner was engaged on daily wages beldar since 1990 and no notice was issued to the petitioner at the time of his termination. But volunteered that on attaining the age of superannuation, he automatically stood relieved. No letter was issued to the petitioner in this respect. He admitted that form mark A had been filled in by the department and in the year, 2010, the department had asked the petitioner to bring his birth certificate and he had produced the birth certificate Ex. RW-1/C before the department which was not considered. He further admitted that the department had advised the petitioner to appear before Medical Board and the certificate issued by the Board mark Z-1, was received by the department. He denied that certificate mark-B has been procured fraudulently.

12. I have considered the contentions of the learned counsel for petitioner as well as learned ADA for respondent and also scrutinized the record of the case minutely.

13. After the closer scrutiny of the record, it has become clear that the petitioner was initially engaged by the respondent as daily waged beldar in the year, 1990. It is also not disputed that as per general principles/rules, the retirement age of class-IV employees is 60 years. As per the case of the respondent since the petitioner has attained the age of 60 years on 30.6.2010 as per the official record, therefore, he was not issued further muster roll beyond attaining the age of 60 years. It is also not in dispute that the petitioner has received his retiral benefits i.e gratuity amounting to ` 58,442/- . The perusal of the record reveals that the petitioner had submitted different date of birth certificates at different points of time before the respondent. In the year, 2010 he also submitted E salary form, mark A, in which he has mentioned his date of birth as 1950 and the aforesaid form has been duly acknowledged by him by putting his signatures. It is not the case of the petitioner that the aforesaid form had not been signed by him. Thereafter, the petitioner had submitted his date of birth certificate issued by Sthaniya Vikas Mantralaya, Nepal Government, Tatopani, Jumla wherein his date of birth has been recorded as 2030/3/30 (Vikrami Samvat) which means that in the year, 2010 his age was about 38 years. It is also not disputed that the son of the petitioner namely Shri Dal Bahadur is also working with the respondent as daily waged beldar and as per his service

record his date of birth is 13.1.1985, the copy of which is mark B, which means that in the year, 2010, his age was 27 years. If both the aforesaid certificates are taken into consideration then it is revealed that the petitioner is only 11 years older to his son which is not possible and therefore, the certificate procured by the petitioner from Sthaniya Vikas Mantralaya, Nepal Government, Tatopani, Jumla Ex. RW-1/C appears to be fake and cannot be relied upon.

14. Thereafter, the petitioner submitted a medical certificate and in support of that he examined PW-2 Dr. A Banerjee, who stated that the petitioner was medically examined for assessment of age and vide certificate mark Z-1, the age of the petitioner was assessed below 45 years as per the opinion of Radiologist and clinically above 40 years. However, no original record has been produced by the petitioner with respect to his medical examination. **In a decision reported in 1992 3 SCC 204, titled as Madan Lal Kakkad Vs. Naval Dubey and another**, it has been held by the Hon'ble Apex Court that the evidence given by the Medical Officer is only of an advisory character and the expert witness is expected to put before the Court all the materials which induced him to come to the conclusion. The relevant portion of the aforesaid judgment reads as under:

“A medical witness called in as an expert to assist the Court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the Court on the technical aspect of the case by explaining the terms of science so that the Court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the Court.

However, in the present case no original record has been produced either by the petitioner or by PW-2 Dr. A Banerjee, in respect of his medical examination. The Doctor has also failed to place all the materials before this Court which induced the medical board to come to the conclusion. Besides, the aforesaid medical certificate mark Z-1 issued by the Medical Board is only in the form of an opinion and there is no certainty of the correct age as found in the medical opinion. Since, there are contrary evidences regarding the date of birth of the petitioner, in that event, it cannot be said that the age opined by the medical board is conclusive final and binding. Hence, the aforesaid medical certificate which is in the form of only an opinion and totally contrary to the service record of the petitioner cannot be considered to prevail upon the same in which his year of birth has been recorded as 1950. Moreover, the petitioner slept over his right to get his date of birth altered in the service record for more than 20 years and woke up from his deep slumber only at the fag end of his carrier without explaining the inordinate delay. Such belated and stale claim for alteration of date of birth recorded in the service book which has been made after more than 20 years without any explanation for the delay cannot be considered in the absence of any cogent and satisfactory evidence on record led by the petitioner. The burden was on the petitioner to prove that he had not attained the age of 60 years as on 30.6.2016 but he has miserably failed to discharge his burden. Therefore, in view of the facts and circumstances of the present case, it cannot be said that the services of the petitioner were terminated illegally.

15. The further case of the petitioner is that after the termination of his services, the respondent had retained various persons junior to him and they have been regularized by the department. However, except for the bald statement of the petitioner, no evidence has been led by him to show that his juniors have been regularized by the respondent against the policy of the State Government. The petitioner has also failed to lead any evidence with respect to the fact that he has completed the requisite years of continuous service for regularization as per the Policy of the Government. Moreover, as per my observations supra, the services of the petitioner were never

terminated rather on attaining the age of superannuation, he was considered retired as on 30.6.2010, hence, it cannot be said that the respondent had violated the provisions of sections 25-G & H of the Act.

16. Therefore, in view of my aforesaid discussion, it cannot be said that the termination of the services of the petitioner w.e.f. 30.6.2010 by the respondent is illegal and unjustified. Accordingly, this issue is decided against the petitioner and in favour of the respondent.

Issue No. 2

17. Since, the petitioner has failed to prove issue no.1, this issue becomes redundant.

Issue no. 3

18. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no. 4

19. During the course of arguments, this issue was not pressed by the respondent, hence, the same is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 31st day of May, 2016.

(Sushil Kukreja
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P)

Ref. 26 of 2015.

Instituted on 9.6.2015.

Decided on 31.5.2016.

Jiya lal S/o Shri Mogal Dass R/o VPO Urni, Tehsil Nichar, District Kinnaur, HP.

. . Petitioner.

Vs.

3. Executive Engineer, IPH Division Reckong Peo, District Kinnaur, HP.

4. Assistant Engineer, Sub Division Nichar, District Kinnaur, HP. . . Respondents.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri G.S Negi, Advocate.

For respondent : Shri H.N Kashyap, ADA.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether non-regularization of the services of Shri Jiya lal S/o Shri Mogal Dass R/o VPO Urni, Tehsil Nichar, District Kinnaur, HP by the Executive Engineer, I&PH Division Reckong Peo, District Kinnaur, HP on completion of 8 years of continuous service as per policy of H.P Government as alleged by the workman is legal and justified? If not, what relief of regularization and consequential monetary benefits the aggrieved workman is entitled to from the employer?”

2. Briefly, the case of the petitioner is that his services had been regularized by the respondent department w.e.f 2015 whereas he had completed continuous service of eight years in the year, 2002 by completing 180 days in each calendar year as required in tribal area but his services had not been regularized within the prescribed period as mentioned for regularizing the services of daily wager, hence, the respondent had violated the provisions of policy of State Government. It is further stated that the services of junior persons namely Sumitra Devi, Partap and Jagmohan have been regularized by the respondent by ignoring the eligibility and seniority of the petitioner. It is also stated that by regularizing the services of the petitioner after 20 years from the date of his engagement is straightway illegal and even he (petitioner) had made various oral requests to the respondent department for considering more than 19 years services for regularization but his such request was refused by the respondent. Against this back-drop, a prayer has been made that the services of the petitioner be regularized from the date when the junior persons to him became regular with full back-wages and seniority.

3. By filing reply, the respondents had contested the claim of the petitioner wherein preliminary objections had been taken qua barred by limitation, maintainability and that the petitioner failed to fulfill the eligibility for regularization. On merits, it has been asserted that the petitioner has not become eligible for regularization in the year, 2002 as he had not rendered 180 days in each calendar year till the year, 2008. The petitioner has been working continuously by rendering 180 days in each calendar year from the year, 2008 and had completed eight years of service on 31.3.2015, hence, he has been regularized to the post of beldar during the year, 2015 as per instructions of the Government. It is further asserted that the services of the petitioner had been engaged by the department w.e.f. 1.10.1995 but the petitioner had not rendered 180 days in each calendar year from 1996 to 2007 whereas Smt. Sumitra Devi, Pratap and Jagmohan have fulfilled criteria for regularization prior to the petitioner, hence, their services have been regularized. The name of the petitioner has been considered for his regularization as per the instructions of the Government and his services had been regularized after completion of eight years of continuous daily waged service with 180 days in each calendar year. The respondents prayed for the dismissal of the petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 6.1.2016.

6. Whether the non-regularization of the services of petitioner by the respondent on completion of eight years of continuous service as per policy of HP Government is illegal and unjustified as alleged? . .OPP.
7. If issue no.1 is proved in affirmative to what relief of regularization and consequential monetary benefits the petitioner is entitled to? . .OPP.
8. Whether the petition is time barred as alleged? . .OPR.
9. Whether the petition is not maintainable? . .OPR.
10. Relief.

5. Besides having heard the learned counsels for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Not entitled to any relief.

Issue no.3 No.

Issue no.4 No.

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings.

Issues no.1.

7. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he supported all the averments as stated in claim petition. In cross-examination, he denied that he had not completed 180 days in any calendar year from the year, 1996 to 2007 and that his services for regularization shall be counted from 2008 onwards. He further denied that his services for regularization have been completed on 31.3.2015. He also denied that Ms. Sumitra, Pratap and Jagmohan are senior to him. He admitted that he had been regularized in the department and is continuously working with the department.

8. On the contrary, the respondents examined one Shri Tilak Raj Pathak, Assistant Engineer as RW-1, who tendered in evidence affidavit Ex. RW-1/A wherein he supported almost all the averments as stated in reply. He also tendered in evidence the mandays chart of petitioner Ex. RW-1/B. In cross-examination, he denied that the petitioner had completed 180 days in a calendar year. He denied that the department had not followed the government policy and also violated the mandatory provisions of the policy. He further denied that the petitioner had worked continuously.

9. I have considered the contentions of the learned counsel for petitioner as well as learned ADA for the respondents and also scrutinized the record of the case minutely.

10. After the closer scrutiny of the record, it has become clear that the services of the petitioner have been regularized by the respondent w.e.f. 22.6.2015. The case of the petitioner is that he had completed continuous service of eight years with minimum of 180 days in each calendar year from the date of his initial engagement in the year, 1995 and his services have not been regularized within the prescribed period for regularizing the daily wager by the respondent in violation of the mandatory provisions of the policy of the State Government. It is not disputed that initially the petitioner was engaged in the year, 1995. However, the petitioner has failed to show that he had become eligible for regularization in the year, 2002. The perusal of the mandays chart of the petitioner Ex. RW-1/B, shows that the petitioner has not completed 180 days (as required in tribal area) in each calendar year w.e.f. the year, 1995 to the year, 2002 rather he completed eight years of continuous service with minimum of 180 days in each calendar year from the year 2008 onwards. As per mandays chart Ex. RW-1/B, the petitioner had completed 265 days in the year, 2008, 365 days in 2009, 363 days in 2010, 361 days in 2011, 366 days in 2012, 361 days in 2013 and 358 days in 2014 as such it cannot be said that the petitioner was eligible for regularization in the year, 2002. From the perusal of the policy of State Government for the regularization of daily waged/contingent paid workers mark C, it is clear that only the services of those daily waged workers could be considered for regularization who have completed eight years of continuous service with a minimum of 240 days (except where specified otherwise for the tribal areas) as on 31.3.2011 against the available vacancies. However, the petitioner had completed requisite period of regularization as per policy in the year, 2015 as per mandays chart Ex. RW-1/B. Hence, it cannot be said that the services of the petitioner have not been regularized in terms of the policy of State Government regarding regularization of daily waged/contingent paid workers.

11. The next contention of the learned counsel for the petitioner is that the services of Smt. Sumitra Devi, Pratap and Jagmohan, who were juniors to the petitioner, have been regularized prior to the petitioner by ignoring his seniority and continuity in service. However, except for the bald statement of the petitioner, no evidence has been led by him that the services of aforesaid persons have been regularized against the policy of the State Government. On the other hand, RW-1 has categorically stated in his affidavit by way of evidence Ex. RW-1/A that Smt. Sumitra, Pratap and Jagmohan had fulfilled the prescribed criteria for regularization prior to the petitioner. Hence, in the absence of any evidence on record, it cannot be said that the seniority and continuity of the services of the petitioner have been ignored.

12. Therefore, in view of my aforesaid discussion, it cannot be said that the nonregularization of the services of the petitioner by the respondent on completion of eight years of continuous service as per policy of State Government is illegal and unjustified. Accordingly, this issue is decided against the petitioner and in favour of the respondent.

Issue No. 2

13. Since, the petitioner has failed to prove issue no.1, this issue becomes redundant.

Issue no. 3.

14. The learned ADA for respondents contended that the petition filed by the petitioner is time barred. However, the law on the point is well settled that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The Hon'ble Supreme Court in its various judgments has held that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by

the Hon'ble Supreme Court in *in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cumprocessing Service Society Limited and Another.* that:-

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

15. Therefore, the aforesaid law declared by the Hon'ble Supreme Court in various context makes the legal position clear that there is no limitation prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the industrial dispute. The provision of Article 137 of the schedule to the Indian Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no. 4.

16. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 31st day of May, 2016.

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P)

Ref. 23 of 2015.

Instituted on. 9.6.2015.

Decided on 31.5.2016.

Dev Raj S/o Shri Ratten Dass R/o VPO Jani, Tehsil Nichar, District Kinnaur, HP.

. Petitioner.

Vs.

5. Executive Engineer, IPH Division Reckong Peo, District Kinnaur, HP.

6. Assistant Engineer, Sub Division Nichar, District Kinnaur, HP. . . Respondents.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri G.S Negi, Advocate.

For respondent : Shri H.N Kashyap, ADA.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether non-regularization of the services of Shri Dev Raj S/o Shri Ratten Dass R/o VPO Jani, Tehsil Nichar, District Kinnaur, HP by the Executive Engineer, I&PH Division Reckong Peo, District Kinnaur, HP on completion of 8 years of continuous service as per policy of H.P Government as alleged by the workman is legal nad justified? If not, what relief of regularization and consequential monetary benefits the aggrieved workman is entitled to from the employer?”

2. Briefly, the case of the petitioner is that his services had been regularized by the respondent department w.e.f 2015 whereas he had completed continuous service of eight years in the year, 2002 by completing 180 days in each calendar year as required in tribal area but his services had not been regularized within the prescribed period as mentioned for regularizing the services of daily wager, hence, the respondent had violated the provisions of policy of State Government. It is further stated that the services of junior persons namely Sumitra Devi, Partap and Jagmohan have been regularized by the respondent by ignoring the eligibility and seniority of the petitioner. It is also stated that by regularizing the services of the petitioner after 20 years from the date of his engagement is straightway illegal and even he (petitioner) had made various oral requests to the respondent department for considering more than 19 years services for regularization but his such request was refused by the respondent. Against this back-drop, a prayer has been made that the services of the petitioner be regularized from the date when the junior persons to him became regular with full back-wages and seniority.

3. By filing reply, the respondents had contested the claim of the petitioner wherein preliminary objections had been taken qua barred by limitation, maintainability and that the petitioner failed to fulfill the eligibility for regularization. On merits, it has been asserted that the petitioner has not become eligible for regularization in the year, 2002 as he had not rendered 180 days in each calendar year till the year, 2008. The petitioner has been working continuously by rendering 180 days in each calendar year from the year, 2008 and had completed eight years of service on 31.3.2015, hence, he has been regularized to the post of beldar during the year, 2015 as per instructions of the Government. It is further asserted that the services of the petitioner had been engaged by the department w.e.f. 1.6.1995 but the petitioner had not rendered 180 days in each calendar year from 1996 to 2007 whereas Smt. Sumitra Devi, Pratap and Jagmohan have fulfilled criteria for regularization prior to the petitioner, hence, their services have been regularized. The name of the petitioner has been considered for his regularization as per the instructions of the Government and his services had been regularized after completion of eight years of continuous daily waged service with 180 days in each calendar year. The respondents prayed for the dismissal of the petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 6.1.2016.

11. Whether the non-regularization of the services of petitioner by the respondent on completion of eight years of continuous service as per policy of HP Government is illegal and unjustified as alleged? . .OPP.
12. If issue no.1 is proved in affirmative to what relief of regularization and consequential monetary benefits the petitioner is entitled to? . .OPP.
13. Whether the petition is time barred as alleged? . .OPR.
14. Whether the petition is not maintainable? . .OPR.
15. Relief.

5. Besides having heard the learned counsels for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Not entitled to any relief.

Issue no.3 No.

Issue no.4 No.

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings.

Issues no.1.

7. To prove his case, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he supported all the averments as stated in claim petition. In cross-examination, he denied that he had not completed 180 days in any calendar year from the year, 1996 to 2007 and that his services for regularization shall be counted from 2008 onwards. He further denied that his services for regularization have been completed on 31.3.2015. He also denied that Ms. Sumitra, Pratap and Jagmohan are senior to him. He admitted that he had been regularized in the department and is continuously working with the department.

8. On the contrary, the respondents examined one Shri Tilak Raj Pathak, Assistant Engineer as RW-1, who tendered in evidence affidavit Ex. RW-1/A wherein he supported almost all the averments as stated in reply. He also tendered in evidence the mandays chart of petitioner Ex. RW-1/B. In cross-examination, he denied that the petitioner had completed 180 days in a calendar year. He denied that the department had not followed the government policy and also violated the mandatory provisions of the policy. He further denied that the petitioner had worked continuously.

9. I have considered the contentions of the learned counsel for petitioner as well as learned ADA for the respondents and also scrutinized the record of the case minutely.

10. After the closer scrutiny of the record, it has become clear that the services of the petitioner have been regularized by the respondent w.e.f. 22.6.2015. The case of the petitioner is that he had completed continuous service of eight years with minimum of 180 days in each calendar year from the date of his initial engagement in the year, 1995 and his services have not been regularized within the prescribed period for regularizing the daily wager by the respondent in violation of the mandatory provisions of the policy of the State Government. It is not disputed that initially the petitioner was engaged in the year, 1995. However, the petitioner has failed to show that he had become eligible for regularization in the year, 2002. The perusal of the mandays chart of the petitioner Ex. RW-1/B, shows that the petitioner has not completed 180 days (as required in tribal area) in each calendar year w.e.f. the year, 1995 to the year, 2002 except for the year, 1996 & 1999 rather he completed eight years of continuous service with minimum of 180 days in each calendar year from the year 2008 onwards. As per mandays chart Ex. RW-1/B, the petitioner had completed 353 days in the year, 2008, 365 days in 2009, 362 days in 2010, 363 days in 2011, 366 days in 2012, 328 days in 2013 and 323 days in 2014 as such it cannot be said that the petitioner was eligible for regularization in the year, 2002. From the perusal of the policy of State Government for the regularization of daily waged/contingent paid workers mark C, it is clear that only the services of those daily waged workers could be considered for regularization who have completed eight years of continuous service with a minimum of 240 days (except where specified otherwise for the tribal areas) as on 31.3.2011 against the available vacancies. However, the petitioner had completed requisite period of regularization as per policy in the year, 2015 as per mandays chart Ex. RW-1/B. Hence, it cannot be said that the services of the petitioner have not been regularized in terms of the policy of State Government regarding regularization of daily waged/contingent paid workers.

11. The next contention of the learned counsel for the petitioner is that the services of Smt. Sumitra Devi, Pratap and Jagmohan, who were juniors to the petitioner, have been regularized prior to the petitioner by ignoring his seniority and continuity in service. However, except for the bald statement of the petitioner, no evidence has been led by him that the services of aforesaid persons have been regularized against the policy of the State Government. On the other hand, RW-1 has categorically stated in his affidavit by way of evidence Ex. RW-1/A that Smt. Sumitra, Pratap and Jagmohan had fulfilled the prescribed criteria for regularization prior to the petitioner. Hence, in the absence of any evidence on record, it cannot be said that the seniority and continuity of the services of the petitioner have been ignored.

12. Therefore, in view of my aforesaid discussion, it cannot be said that the nonregularization of the services of the petitioner by the respondent on completion of eight years of continuous service as per policy of State Government is illegal and unjustified. Accordingly, this issue is decided against the petitioner and in favour of the respondent.

Issue No. 2

13. Since, the petitioner has failed to prove issue no.1, this issue becomes redundant.

Issue no. 3

14. The learned ADA for respondents contended that the petition filed by the petitioner is time barred. However, the law on the point is well settled that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The Hon'ble Supreme Court in its various judgments has held that the relief under the Industrial

Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by the Hon'ble Supreme Court in *in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co operative Marketing –cumprocessing Service Society Limited and Another.* that:-

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

15. Therefore, the aforesaid law declared by the Hon'ble Supreme Court in various context makes the legal position clear that there is no limitation prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the industrial dispute. The provision of Article 137 of the schedule to the Indian Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no.4.

16. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 31st day of May, 2016.

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P.)

Ref. 25 of 2015.

Instituted on. 9.6.2015.

Decided on 31.5.2016.

Inderpur W/o Shri Khayalapur R/o VPO Jani, Tehsil Nichar, District Kinnaur, HP.

. Petitioner.

Vs.

7. Executive Engineer, IPH Division Reckong Peo, District Kinnaur, HP.

8. Assistant Engineer, Sub Division Nichar, District Kinnaur, HP. *. Respondents.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri G.S Negi, Advocate.

For respondent : Shri H.N Kashyap, ADA.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether non-regularization of the services of Smt. Inderpur W/o Shri Khayalapur R/o VPO Jani, Tehsil Nichar, District Kinnaur, HP by the Executive Engineer, I&PH Division Reckong Peo, District Kinnaur, HP on completion of 8 years of continuous service as per policy of H.P Government as alleged by the workman is legal and justified? If not, what relief of regularization and consequential service monetary the aggrieved workman is entitled to from the employer?”

2. Briefly, the case of the petitioner is that her services had been regularized by the respondent department w.e.f 2015 whereas she had completed continuous service of eight years in the year, 2002 by completing 180 days in each calendar year as required in tribal area but her services had not been regularized within the prescribed period as mentioned for regularizing the services of daily wager, hence, the respondent had violated the provisions of policy of State Government. It is further stated that the services of junior persons namely Sumitra Devi, Partap and Jagmohan have been regularized by the respondent by ignoring the eligibility and seniority of the petitioner. It is also stated that by regularizing the services of the petitioner after 20 years from the date of her engagement is straightway illegal and even she (petitioner) had made various oral requests to the respondent department for considering more than 19 years services for regularization but her such request was refused by the respondent. Against this back-drop, a prayer has been made that the services of the petitioner be regularized from the date when the junior persons to her became regular with full back-wages and seniority.

3. By filing reply, the respondents had contested the claim of the petitioner wherein preliminary objections had been taken qua barred by limitation, maintainability and that the petitioner failed to fulfill the eligibility for regularization. On merits, it has been asserted that the petitioner has not become eligible for regularization in the year, 2002 as she had not rendered 180 days in each calendar year till the year, 2008. The petitioner did not fulfill the required academic/educational criteria accordingly her case has been sent to the Superintending Engineer for relaxation of academic qualification. The petitioner has been working continuously by rendering 180 days in each calendar year from the year, 2008 and had completed eight years of service on 31.3.2015, hence, she has been regularized to the post of beldar during the year, 2015 as per instructions of the Government. It is further asserted that the services of the petitioner had been engaged by the department w.e.f. 1.6.1995 but the petitioner had not rendered 180 days in each calendar year from 1996 to 2007 whereas Smt. Sumitra Devi, Pratap and Jagmohan have fulfilled criteria for regularization prior to the petitioner, hence, their services have been regularized. The name of the petitioner has been considered for his regularization as per the instructions of the Government and her services had been regularized after completion of eight years of continuous

daily waged service with 180 days in each calendar year. The respondents prayed for the dismissal of the petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 6.1.2016.

16. Whether the non-regularization of the services of petitioner by the respondent on completion of eight years of continuous service as per policy of HP Government is illegal and unjustified as alleged? . .OPP.
17. If issue no.1 is proved in affirmative to what relief of regularization and consequential monetary benefits the petitioner is entitled to? . .OPP.
18. Whether the petition is time barred as alleged? . .OPR.
19. Whether the petition is not maintainable? . .OPR.
20. Relief.

5. Besides having heard the learned counsels for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under. Issue no.1 No. Issue no.2 Not entitled to any relief.

Issue no.3 No.

Issue no.4 No.

Relief Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings

Issues no.1.

7. Before, I proceed further, it is important to mention here that to prove her case, the petitioner has been afforded repeated opportunities in order to lead her evidence but the petitioner has failed to lead her evidence in support of her case. Hence, vide order dated 26.4.2016, the evidence of the petitioner was closed by the order of this Court.

8. On the other hand, the respondents examined one Shri Tilak Raj Pathak, Assistant Engineer as RW-1, who tendered in evidence affidavit Ex. RW-1/A wherein he supported almost all the averments as stated in reply. He also tendered in evidence the mandays chart of petitioner Ex. RW-1/B, letter of relaxation for regularization Ex. RW-1/C and appointment letter Ex. RW 1/D. In cross-examination, he denied that the petitioner had completed 180 days in a calendar year. He denied that the department had not followed the government policy and also violated the mandatory provisions of the policy. He further denied that the petitioner had worked continuously.

9. I have considered the contentions of the learned counsel for petitioner as well as learned ADA for the respondents and also scrutinized the record of the case minutely.

10. After the closer scrutiny of the record, it has become clear that the services of the petitioner have been regularized by the respondent w.e.f. 15.3.2016 as is evident from the office order dated 17.3.2016 Ex. RW-1/D. The case of the petitioner is that she had completed continuous service of eight years with minimum of 180 days in each calendar year from the date of her initial engagement in the year, 1995 and her services have not been regularized within the prescribed period for regularizing the daily wager by the respondent in violation of the mandatory provisions of the policy of the State Government. It is not disputed that initially the petitioner was engaged in the year, 1995. However, the petitioner has failed to show that she had become eligible for regularization in the year, 2002. The perusal of the mandays chart of the petitioner Ex. RW-1/B, shows that the petitioner has not completed 180 days (as required in tribal area) in each calendar year w.e.f. the year, 1995 to the year, 2002 except for the year, 1999 rather she completed eight years of continuous service with minimum of 180 days in each calendar year from the year 2008 onwards. As per mandays chart Ex. RW-1/B, the petitioner had completed 353 days in the year, 2008, 365 days in 2009, 362 days in 2010, 363 days in 2011, 366 days in 2012, 358 days in 2013 and 361 days in 2014 as such it cannot be said that the petitioner was eligible for regularization in the year, 2002. From the perusal of the policy of State Government for the regularization of daily waged/contingent paid workers, it is clear that only the services of those daily waged workers could be considered for regularization who have completed eight years of continuous service with a minimum of 240 days (except where specified otherwise for the tribal areas) as on 31.3.2011 against the available vacancies. However, the petitioner had completed requisite period of regularization as per policy in the year, 2015 as per mandays chart Ex. RW-1/B. Moreover, since the petitioner did not fulfill the required criteria of educational qualification for the purpose of regularization, hence, relaxation in academic qualification was obtained from the Superintending Engineer by the Executive Engineer vide letter dated 10.9.2015 Ex. RW-1/C and thereafter her services were regularized. Hence, it cannot be said that the services of the petitioner have not been regularized in terms of the policy of State Government regarding regularization of daily waged/contingent paid workers.

11. The next contention of the learned counsel for the petitioner is that the services of Smt. Sumitra Devi, Pratap and Jagmohan, who were juniors to the petitioner, have been regularized prior to the petitioner by ignoring her seniority and continuity in service. However, for the failure of the petitioner to appear before this Court in order to lead evidence, it cannot be said that the services of aforesaid persons have been regularized against the policy of the State Government. On the other hand, RW-1 has categorically stated in his affidavit by way of evidence Ex. RW-1/A that Smt. Sumitra, Pratap and Jagmohan had fulfilled the prescribed criteria for regularization prior to the petitioner. Hence, in the absence of any evidence on record, it cannot be said that the seniority and continuity of the services of the petitioner have been ignored.

12. Therefore, in view of my aforesaid discussion, it cannot be said that the nonregularization of the services of the petitioner by the respondent on completion of eight years of continuous service as per policy of State Government is illegal and unjustified. Accordingly, this issue is decided against the petitioner and in favour of the respondents.

Issue No. 2

13. Since, the petitioner has failed to prove issue no.1, this issue becomes redundant.

Issue no. 3

14. The learned ADA for respondents contended that the petition filed by the petitioner is time barred. However, the law on the point is well settled that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The

Hon'ble Supreme Court in its various judgments has held that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by the Hon'ble Supreme Court in *in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co operative Marketing –cumprocessing Service Society Limited and Another.* that:-

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

15. Therefore, the aforesaid law declared by the Hon'ble Supreme Court in various context makes the legal position clear that there is no limitation prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the industrial dispute. The provision of Article 137 of the schedule to the Indian Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issue no.4.

16. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 31st day of May, 2016.

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P.)

Ref. 20 of 2015.

Instituted on. 9.6.2015.

Decided on 31.5.2016.

Madan Singh S/o Shri Bilbar Dass R/o VPO Jani, Tehsil Nichar, District Kinnaur, HP.

. . Petitioner.

Vs.

9. Executive Engineer, IPH Division Reckong Peo, District Kinnaur, HP.

10. Assistant Engineer, Sub Division Nichar, District Kinnaur, HP. . .*Respondents.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri G.S Negi, Advocate.

For respondent : Shri H.N Kashyap, ADA.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether non-regularization of the services of Shri Madan Singh S/o Shri Bilbar Dass R/o VPO Jani, Tehsil Nichar, District Kinnaur, HP by the Executive Engineer, I&PH Division Reckong Peo, District Kinnaur, HP on completion of 8 years of continuous service as per policy of H.P Government as alleged by the workman is legal and justified? If not, what relief of regularization and consequential monetary benefits the aggrieved workman is entitled to from the employer?”

2. Briefly, the case of the petitioner is that his services had been regularized by the respondent department w.e.f 2015 whereas he had completed continuous service of eight years in the year, 2002 by completing 180 days in each calendar year as required in tribal area but his services had not been regularized within the prescribed period as mentioned for regularizing the services of daily wager, hence, the respondent had violated the provisions of policy of State Government. It is further stated that the services of junior persons namely Sumitra Devi, Partap and Jagmohan have been regularized by the respondent by ignoring the eligibility and seniority of the petitioner. It is also stated that by regularizing the services of the petitioner after 20 years from the date of his engagement is straightway illegal and even he (petitioner) had made various oral requests to the respondent department for considering more than 19 years services for regularization but his such request was refused by the respondent. Against this back-drop, a prayer has been made that the services of the petitioner be regularized from the date when the junior persons to him became regular with full back-wages and seniority.

3. By filing reply, the respondents had contested the claim of the petitioner wherein preliminary objections had been taken qua barred by limitation, maintainability and that the petitioner failed to fulfill the eligibility for regularization. On merits, it has been asserted that the petitioner has not become eligible for regularization in the year, 2002 as he had not rendered 180 days in each calendar year till the year, 2008. The petitioner did not fulfill the required academic/educational criteria accordingly his case has been sent to the Superintending Engineer for relaxation of academic qualification. The petitioner has been working continuously by rendering 180 days in each calendar year from the year, 2008 and had completed eight years of service on 31.3.2015, hence, he has been regularized to the post of beldar during the year, 2015 as per instructions of the Government. It is further asserted that the services of the petitioner had been engaged by the department w.e.f. 1.6.1995 but the petitioner had not rendered 180 days in each calendar year from 1996 to 2007 whereas Smt. Sumitra Devi, Pratap and Jagmohan have fulfilled criteria for regularization prior to the petitioner, hence, their services have been regularized. The name of the petitioner has been considered for his regularization as per the instructions of the Government and his services had been regularized after completion of eight years of continuous

daily waged service with 180 days in each calendar year. The respondents prayed for the dismissal of the petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 6.1.2016.

21. Whether the non-regularization of the services of petitioner by the respondent on completion of eight years of continuous service as per policy of HP Government is illegal and unjustified as alleged? . .OPP.
22. If issue no.1 is proved in affirmative to what relief of regularization and consequential monetary benefits the petitioner is entitled to? . .OPP.
23. Whether the petition is time barred as alleged? . .OPR.
24. Whether the petition is not maintainable? . .OPR.
25. Relief.

5. Besides having heard the learned counsels for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Not entitled to any relief.

Issue no.3 No.

Issue no.4 No.

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings.

Issues no.1.

7. Before, I proceed further, it is important to mention here that to prove his case, the petitioner has been afforded repeated opportunities in order to lead his evidence but the petitioner has failed to lead his evidence in support of his case. Hence, vide order dated 26.4.2016, the evidence of the petitioner was closed by the order of this Court.

8. On the other hand, the respondents examined one Shri Tilak Raj Pathak, Assistant Engineer as RW-1, who tendered in evidence affidavit Ex. RW-1/A wherein he supported almost all the averments as stated in reply. He also tendered in evidence the mandays chart of petitioner Ex. RW-1/B, letter of relaxation for regularization Ex. RW-1/C and appointment letter Ex. RW 1/D. In cross-examination, he denied that the petitioner had completed 180 days in a calendar year. He denied that the department had not followed the government policy and also violated the mandatory provisions of the policy. He further denied that the petitioner had worked continuously.

9. I have considered the contentions of the learned counsel for petitioner as well as learned ADA for the respondents and also scrutinized the record of the case minutely.

10. After the closer scrutiny of the record, it has become clear that the services of the petitioner have been regularized by the respondent w.e.f. 15.3.2016 as is evident from the office order dated 17.3.2016 Ex. RW-1/D. The case of the petitioner is that he had completed continuous service of eight years with minimum of 180 days in each calendar year from the date of his initial engagement in the year, 1995 and his services have not been regularized within the prescribed period for regularizing the daily wager by the respondent in violation of the mandatory provisions of the policy of the State Government. It is not disputed that initially the petitioner was engaged in the year, 1995. However, the petitioner has failed to show that he had become eligible for regularization in the year, 2002. The perusal of the mandays chart of the petitioner Ex. RW-1/B, shows that the petitioner has not completed 180 days (as required in tribal area) in each calendar year w.e.f. the year, 1995 to the year, 2002 except for the year, 1999 rather he completed eight years of continuous service with minimum of 180 days in each calendar year from the year 2008 onwards. As per mandays chart Ex. RW-1/B, the petitioner had completed 353 days in the year, 2008, 365 days in 2009, 362 days in 2010, 361 days in 2011, 366 days in 2012, 363 days in 2013 and 361 days in 2014 as such it cannot be said that the petitioner was eligible for regularization in the year, 2002. From the perusal of the policy of State Government for the regularization of daily waged/contingent paid workers, it is clear that only the services of those daily waged workers could be considered for regularization who have completed eight years of continuous service with a minimum of 240 days (except where specified otherwise for the tribal areas) as on 31.3.2011 against the available vacancies. However, the petitioner had completed requisite period of regularization as per policy in the year, 2015 as per mandays chart Ex. RW-1/B. Moreover, since the petitioner did not fulfill the required criteria of educational qualification for the purpose of regularization, hence, relaxation in academic qualification was obtained from the Superintending Engineer by the Executive Engineer vide letter dated 10.9.2015 Ex. RW-1/C and thereafter his services were regularized. Hence, it cannot be said that the services of the petitioner have not been regularized in terms of the policy of State Government regarding regularization of daily waged/contingent paid workers.

11. The next contention of the learned counsel for the petitioner is that the services of Smt. Sumitra Devi, Pratap and Jagmohan, who were juniors to the petitioner, have been regularized prior to the petitioner by ignoring his seniority and continuity in service. However, for the failure of the petitioner to appear before this Court in order to lead evidence, it cannot be said that the services of aforesaid persons have been regularized against the policy of the State Government. On the other hand, RW-1 has categorically stated in his affidavit by way of evidence Ex. RW-1/A that Smt. Sumitra, Pratap and Jagmohan had fulfilled the prescribed criteria for regularization prior to the petitioner. Hence, in the absence of any evidence on record, it cannot be said that the seniority and continuity of the services of the petitioner have been ignored.

12. Therefore, in view of my aforesaid discussion, it cannot be said that the nonregularization of the services of the petitioner by the respondent on completion of eight years of continuous service as per policy of State Government is illegal and unjustified. Accordingly, this issue is decided against the petitioner and in favour of the respondents.

Issue No. 2

13. Since, the petitioner has failed to prove issue no.1, this issue becomes redundant.

Issue no. 3

14. The learned ADA for respondents contended that the petition filed by the petitioner is time barred. However, the law on the point is well settled that no limitation is prescribed either

under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The Hon'ble Supreme Court in its various judgments has held that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by the Hon'ble Supreme Court in *in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co operative Marketing –cumprocessing Service Society Limited and Another.* that:-

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

15. Therefore, the aforesaid law declared by the Hon'ble Supreme Court in various context makes the legal position clear that there is no limitation prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the industrial dispute. The provision of Article 137 of the schedule to the Indian Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issue no.4.

16. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 31st day of May, 2016.

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P.)

Ref. 24 of 2015.

Instituted on. 9.6.2015.

Decided on 31.5.2016.

Dharam Mani W/o Shri Jiya Lal R/o VPO Urni, Tehsil Nichar, District Kinnaur, HP.

. .Petitioner.

Vs.

11. Executive Engineer, IPH Division Reckong Peo, District Kinnaur, HP.

12. Assistant Engineer, Sub Division Nichar, District Kinnaur, HP. . *Respondents.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri G.S Negi, Advocate.

For respondent : Shri H.N Kashyap, ADA.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether non-regularization of the services of Smt. Dharam Mani W/o Shri Jiya Lal R/o VPO Urni, Tehsil Nichar, District Kinnaur, HP by the Executive Engineer, I&PH Division Reckong Peo, District Kinnaur, HP on completion of 8 years of continuous service as per policy of H.P Government as alleged by the workman is legal and justified? If not, what relief of regularization and consequential monetary benefits the aggrieved workman is entitled to from the employer?”

2. Briefly, the case of the petitioner is that her services had been regularized by the respondent department w.e.f 2015 whereas she had completed continuous service of eight years in the year, 2002 by completing 180 days in each calendar year as required in tribal area but her services had not been regularized within the prescribed period as mentioned for regularizing the services of daily wager, hence, the respondent had violated the provisions of policy of State Government. It is further stated that the services of junior persons namely Sumitra Devi, Partap and Jagmohan have been regularized by the respondent by ignoring the eligibility and seniority of the petitioner. It is also stated that by regularizing the services of the petitioner after 20 years from the date of his engagement is straightway illegal and even she (petitioner) had made various oral requests to the respondent department for considering more than 19 years services for regularization but her such request was refused by the respondent. Against this back-drop, a prayer has been made that the services of the petitioner be regularized from the date when the junior persons to her became regular with full back-wages and seniority.

3. By filing reply, the respondents had contested the claim of the petitioner wherein preliminary objections had been taken qua barred by limitation, maintainability and that the petitioner failed to fulfill the eligibility for regularization. On merits, it has been asserted that the petitioner has not become eligible for regularization in the year, 2002 as she had not rendered 180 days in each calendar year till the year, 2008. The petitioner did not fulfill the required academic/educational criteria accordingly his case has been sent to the Superintending Engineer for relaxation of academic qualification. The petitioner has been working continuously by rendering 180 days in each calendar year from the year, 2008 and had completed eight years of service on 31.3.2015, hence, she has been regularized to the post of beldar during the year, 2015 as per instructions of the Government. It is further asserted that the services of the petitioner had been engaged by the department w.e.f. 1.6.1995 but the petitioner had not rendered 180 days in each calendar year from 1996 to 2007 whereas Smt. Sumitra Devi, Pratap and Jagmohan have fulfilled criteria for regularization prior to the petitioner, hence, their services have been regularized. The name of the petitioner has been considered for her regularization as per the instructions of the Government and her services had been regularized after completion of eight years of continuous

daily waged service with 180 days in each calendar year. The respondents prayed for the dismissal of the petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 6.1.2016.

26. Whether the non-regularization of the services of petitioner by the respondent on completion of eight years of continuous service as per policy of HP Government is illegal and unjustified as alleged? .OPP.
27. If issue no.1 is proved in affirmative to what relief of regularization and consequential monetary benefits the petitioner is entitled to? .OPP.
28. Whether the petition is time barred as alleged? .OPR.
29. Whether the petition is not maintainable? .OPR.
30. Relief.

5. Besides having heard the learned counsels for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Not entitled to any relief.

Issue no.3 No.

Issue no.4 No.

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings.

Issues no.1.

7. To prove her case, the petitioner stepped into the witness box as PW-1 and tendered in evidence her affidavit Ex. PW-1/A wherein she supported all the averments as stated in claim petition. In cross-examination, she denied that she had not completed 180 days in any calendar year from the year, 1996 to 2007 and that her services for regularization shall be counted from 2008 onwards. She further denied that her services for regularization have been completed on 31.3.2015. She also denied that Ms. Sumitra, Pratap and Jagmohan are senior to her. She admitted that she had been regularized in the department and is continuously working with the department.

8. On the contrary, the respondents examined one Shri Tilak Raj Pathak, Assistant Engineer as RW-1, who tendered in evidence affidavit Ex. RW-1/A wherein he supported almost all the averments as stated in reply. He also tendered in evidence the mandays chart of petitioner Ex. RW-1/B. In cross-examination, he denied that the petitioner had completed 180 days in a

calendar year. He denied that the department had not followed the government policy and also violated the mandatory provisions of the policy. He further denied that the petitioner had worked continuously.

9. I have considered the contentions of the learned counsel for petitioner as well as learned ADA for the respondents and also scrutinized the record of the case minutely.

10. After the closer scrutiny of the record, it has become clear that the services of the petitioner have been regularized by the respondent w.e.f. 15.3.2016 as per office order Ex. RW 1/D. The case of the petitioner is that she had completed continuous service of eight years with minimum of 180 days in each calendar year from the date of her initial engagement in the year, 1995 and her services have not been regularized within the prescribed period for regularizing the daily wager by the respondent in violation of the mandatory provisions of the policy of the State Government. It is not disputed that initially the petitioner was engaged in the year, 1995. However, the petitioner has failed to show that she had become eligible for regularization in the year, 2002. The perusal of the mandays chart of the petitioner Ex. RW-1/B, shows that the petitioner has not completed 180 days (as required in tribal area) in each calendar year w.e.f. the year, 1995 to the year, 2002 rather she completed eight years of continuous service with minimum of 180 days in each calendar year from the year 2008 onwards. As per mandays chart Ex. RW-1/B, the petitioner had completed 251 days in the year, 2008, 365 days in 2009, 348 days in 2010, 352 days in 2011, 338 days in 2012, 359 days in 2013 and 361 days in 2014 as such it cannot be said that the petitioner was eligible for regularization in the year, 2002. From the perusal of the policy of State Government for the regularization of daily waged/contingent paid workers mark C, it is clear that only the services of those daily waged workers could be considered for regularization who have completed eight years of continuous service with a minimum of 240 days (except where specified otherwise for the tribal areas) as on 31.3.2011 against the available vacancies. However, the petitioner had completed requisite period of regularization as per policy in the year, 2015 as per mandays chart Ex. RW-1/B. Moreover, since the petitioner did not fulfill the required criteria of educational qualification for the purpose of regularization, hence, relaxation in academic qualification was obtained from the Superintending Engineer by the Executive Engineer vide letter dated 10.9.2015 Ex. RW-1/C and thereafter her services were regularized. Hence, it cannot be said that the services of the petitioner have not been regularized in terms of the policy of State Government regarding regularization of daily waged/contingent paid workers.

11. The next contention of the learned counsel for the petitioner is that the services of Smt. Sumitra Devi, Pratap and Jagmohan, who were juniors to the petitioner, have been regularized prior to the petitioner by ignoring his seniority and continuity in service. However, except for the bald statement of the petitioner, no evidence has been led by her that the services of aforesaid persons have been regularized against the policy of the State Government. On the other hand, RW-1 has categorically stated in his affidavit by way of evidence Ex. RW-1/A that Smt. Sumitra, Pratap and Jagmohan had fulfilled the prescribed criteria for regularization prior to the petitioner. Hence, in the absence of any evidence on record, it cannot be said that the seniority and continuity of the services of the petitioner have been ignored.

12. Therefore, in view of my aforesaid discussion, it cannot be said that the nonregularization of the services of the petitioner by the respondent on completion of eight years of continuous service as per policy of State Government is illegal and unjustified. Accordingly, this issue is decided against the petitioner and in favour of the respondent.

Issue No.2

13. Since, the petitioner has failed to prove issue no.1, this issue becomes redundant.

Issue no.3.

14. The learned ADA for respondents contended that the petition filed by the petitioner is time barred. However, the law on the point is well settled that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The Hon'ble Supreme Court in its various judgments has held that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by the Hon'ble Supreme Court in *in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co operative Marketing –cumprocessing Service Society Limited and Another.* that:—

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

15. Therefore, the aforesaid law declared by the Hon'ble Supreme Court in various context makes the legal position clear that there is no limitation prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the industrial dispute. The provision of Article 137 of the schedule to the Indian Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no.4.

16. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 31st day of May, 2016.

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P.)**

Ref. 21 of 2015.

Instituted on. 9.6.2015.

Decided on 31.5.2016.

Santi Lal S/o Shri Zinpur R/o VPO Jani, Tehsil Nichar, District Kinnaur, HP. . . *Petitioner.*

Vs.

13. Executive Engineer, IPH Division Reckong Peo, District Kinnaur, HP.
14. Assistant Engineer, Sub Division Nichar, District Kinnaur, HP. . . *Respondents.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri G.S Negi, Advocate.

For respondent : Shri H.N Kashyap, ADA.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether non-regularization of the services of Shri Shanti Lal S/o Shri Zinpur R/o VPO Jani, Tehsil Nichar, District Kinnaur, HP by the Executive Engineer, I&PH Division Reckong Peo, District Kinnaur, HP on completion of 8 years of continuous service as per policy of H.P Government as alleged by the workman is legal and justified? If not, what relief of regularization and consequential service monetary the aggrieved workman is entitled to from the employer?”

2. Briefly, the case of the petitioner is that his services had been regularized by the respondent department w.e.f 2015 whereas he had completed continuous service of eight years in the year, 2002 by completing 180 days in each calendar year as required in tribal area but his services had not been regularized within the prescribed period as mentioned for regularizing the services of daily wager, hence, the respondent had violated the provisions of policy of State Government. It is further stated that the services of junior persons namely Sumitra Devi, Partap and Jagmohan have been regularized by the respondent by ignoring the eligibility and seniority of the petitioner. It is also stated that by regularizing the services of the petitioner after 20 years from the date of his engagement is straightway illegal and even he (petitioner) had made various oral requests to the respondent department for considering more than 19 years services for regularization but his such request was refused by the respondent. Against this back-drop, a prayer has been made that the services of the petitioner be regularized from the date when the junior persons to him became regular with full back-wages and seniority.

3. By filing reply, the respondents had contested the claim of the petitioner wherein preliminary objections had been taken qua barred by limitation, maintainability and that the petitioner failed to fulfill the eligibility for regularization. On merits, it has been asserted that the petitioner has not become eligible for regularization in the year, 2002 as he had not rendered 180

days in each calendar year till the year, 2008. The petitioner did not fulfill the required academic/educational criteria accordingly his case has been sent to the Superintending Engineer for relaxation of academic qualification. The petitioner has been working continuously by rendering 180 days in each calendar year from the year, 2008 and had completed eight years of service on 31.3.2015, hence, he has been regularized to the post of beldar during the year, 2015 as per instructions of the Government. It is further asserted that the services of the petitioner had been engaged by the department w.e.f. 1.6.1995 but the petitioner had not rendered 180 days in each calendar year from 1996 to 2007 whereas Smt. Sumitra Devi, Pratap and Jagmohan have fulfilled criteria for regularization prior to the petitioner, hence, their services have been regularized. The name of the petitioner has been considered for his regularization as per the instructions of the Government and his services had been regularized after completion of eight years of continuous daily waged service with 180 days in each calendar year. The respondents prayed for the dismissal of the petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 6.1.2016.

31. Whether the non-regularization of the services of petitioner by the respondent on completion of eight years of continuous service as per policy of HP Government is illegal and unjustified as alleged? . .OPP.
32. If issue no.1 is proved in affirmative to what relief of regularization and consequential monetary benefits the petitioner is entitled to? . .OPP.
33. Whether the petition is time barred as alleged? . .OPR.
34. Whether the petition is not maintainable? . .OPR.
35. Relief.

5. Besides having heard the learned counsels for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Not entitled to any relief.

Issue no.3 No.

Issue no.4 No.

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings.

Issues no.1.

7. Before, I proceed further, it is important to mention here that to prove his case, the petitioner has been afforded repeated opportunities in order to lead his evidence but the petitioner has failed to lead his evidence in support of his case. Hence, vide order dated 26.4.2016, the evidence of the petitioner was closed by the order of this Court.

8. On the other hand, the respondents examined one Shri Tilak Raj Pathak, Assistant Engineer as RW-1, who tendered in evidence affidavit Ex. RW-1/A wherein he supported almost all the averments as stated in reply. He also tendered in evidence the mandays chart of petitioner Ex. RW-1/B, letter of relaxation for regularization Ex. RW-1/C and appointment letter Ex. RW 1/D. In cross-examination, he denied that the petitioner had completed 180 days in a calendar year. He denied that the department had not followed the government policy and also violated the mandatory provisions of the policy. He further denied that the petitioner had worked continuously.

9. I have considered the contentions of the learned counsel for petitioner as well as learned ADA for the respondents and also scrutinized the record of the case minutely.

10. After the closer scrutiny of the record, it has become clear that the services of the petitioner have been regularized by the respondent w.e.f. 15.3.2016 as is evident from the office order dated 17.3.2016 Ex. RW-1/D. The case of the petitioner is that he had completed continuous service of eight years with minimum of 180 days in each calendar year from the date of his initial engagement in the year, 1995 and his services have not been regularized within the prescribed period for regularizing the daily wager by the respondent in violation of the mandatory provisions of the policy of the State Government. It is not disputed that initially the petitioner was engaged in the year, 1995. However, the petitioner has failed to show that he had become eligible for regularization in the year, 2002. The perusal of the mandays chart of the petitioner Ex. RW-1/B, shows that the petitioner has not completed 180 days (as required in tribal area) in each calendar year w.e.f. the year, 1995 to the year, 2002 except for the year, 1999 rather he completed eight years of continuous service with minimum of 180 days in each calendar year from the year 2008 onwards. As per mandays chart Ex. RW-1/B, the petitioner had completed 353 days in the year, 2008, 365 days in 2009, 365 days in 2010, 363 days in 2011, 366 days in 2012, 365 days in 2013 and 361 days in 2014 as such it cannot be said that the petitioner was eligible for regularization in the year, 2002. From the perusal of the policy of State Government for the regularization of daily waged/contingent paid workers, it is clear that only the services of those daily waged workers could be considered for regularization who have completed eight years of continuous service with a minimum of 240 days (except where specified otherwise for the tribal areas) as on 31.3.2011 against the available vacancies. However, the petitioner had completed requisite period of regularization as per policy in the year, 2015 as per mandays chart Ex. RW-1/B. Moreover, since the petitioner did not fulfill the required criteria of educational qualification for the purpose of regularization, hence, relaxation in academic qualification was obtained from the Superintending Engineer by the Executive Engineer vide letter dated 10.9.2015 Ex. RW-1/C and thereafter his services were regularized. Hence, it cannot be said that the services of the petitioner have not been regularized in terms of the policy of State Government regarding regularization of daily waged/contingent paid workers.

11. The next contention of the learned counsel for the petitioner is that the services of Smt. Sumitra Devi, Pratap and Jagmohan, who were juniors to the petitioner, have been regularized prior to the petitioner by ignoring his seniority and continuity in service. However, for the failure of the petitioner to appear before this Court in order to lead evidence, it cannot be said that the services of aforesaid persons have been regularized against the policy of the State Government. On the other hand, RW-1 has categorically stated in his affidavit by way of evidence Ex. RW-1/A that Smt. Sumitra, Pratap and Jagmohan had fulfilled the prescribed criteria for regularization prior to the petitioner. Hence, in the absence of any evidence on record, it cannot be said that the seniority and continuity of the services of the petitioner have been ignored.

12. Therefore, in view of my aforesaid discussion, it cannot be said that the nonregularization of the services of the petitioner by the respondent on completion of eight years of continuous service as per policy of State Government is illegal and unjustified. Accordingly, this issue is decided against the petitioner and in favour of the respondents.

Issue No. 2

13. Since, the petitioner has failed to prove issue no.1, this issue becomes redundant.

Issue no. 3

14. The learned ADA for respondents contended that the petition filed by the petitioner is time barred. However, the law on the point is well settled that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The Hon'ble Supreme Court in its various judgments has held that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by the Hon'ble Supreme Court in *in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co operative Marketing –cumprocessing Service Society Limited and Another.* that:-

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"

15. Therefore, the aforesaid law declared by the Hon'ble Supreme Court in various context makes the legal position clear that there is no limitation prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the industrial dispute. The provision of Article 137 of the schedule to the Indian Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issue no. 4.

16. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 31st day of May, 2016.

(Sushil Kukreja
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P.).**

Ref. No. 81 of 2014.

Instituted on. 26.12.2014.

Decided on 11.5.2016.

Guman Singh S/o Shri Geeta Ram R/o Village & P.O Purwala, Tehsil Paonta Sahib, District Sirmour, HP, ex-beldar Horticulture Department. . *Petitioner.*

Vs.

1. The Deputy Director, Horticulture with headquarters at Nahan District Sirmour, HP.
2. The Horticulture Development Officer, Paonta Sahib, District Sirmour, HP.
3. The PCDO Dhaulakaun, District Sirmour, HP. . *Respondents.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Abhyendra Gupta, Advocate.

For respondents : Shri H.N Kashyap, ADA.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether termination of services of Shri Guman Singh S/o Shri Geeta Ram R/o Village Purwala Kanshipur, P.O Purewala, District Sirmour, HP employed as piece rated worker during November, 2012 by the Deputy Director Horticulture Nahan District Sirmour, HP is legal and justified? If not, what amount of back-wages, seniority, past service benefitis and compensation the above worker is entitled to from the above employer (s)?”

2. Briefly, the case of the petitioner is that he was serving as beldar in Horticulture Department at Dhaulakaun District Sirmour, HP w.e.f. November, 2010 and completed 240 days in a calendar year but his services were disengaged in the year, 2012 without following the mandatory provisions of Industrial Disputes Act, 1947 (hereinafter referred to as Act) as no notice or any sort of compensation was given to him. It is further stated that the petitioner met the concerned authorities several times but nothing has happened except false assurances. It is also stated that the petitioner is not gainfully employed. Against this back-drop a prayer has been made for his reinstatement, along-with back-wages and other consequential service benefits.

3. By filing reply, the respondents had contested the claim of the petitioner wherein preliminary objections had been taken that the petitioner has no locus standi to file this petition as he had worked under the invitation of quotations, no jurisdiction and estoppel. On merits, it has been asserted that the petitioner never served as beldar or daily wager with the respondents as the work was awarded to him after publishing advertisement and as such he had only worked on bill basis by calculating his work hours and quantum of work during the period from September, 2010

to March, 2012 and he was paid on the basis of bills raised by him duly verified by the incharge concerned, hence, the petitioner is not covered under the provisions of the Act and as such no notice or any compensation was required for his dis-engagement. It is further asserted that the petitioner was engaged and dis-engaged on the requirement of seasonal Horticultural works and no assurance was given to him for re-engagement. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

5. Pleadings of the parties gave rise to the following issues which were struck on 5.1.2016.

36. Whether the termination of the services of the petitioner during November, 2012 by the respondent is illegal and unjustified as alleged? . .OPP.

37. If issue no.1 is proved in affirmative to what relief of service benefits, the petitioner is entitled to? . .OPP.

38. Whether the petitioner has no locus standi to file the present case as alleged? . .OPR.

39. Whether this Court has no jurisdiction to try the case as alleged? . .OPR.

40. Relief.

6. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant.

Issue no.3 No.

Issue no. 4 Not pressed.

Relief. Reference answered against the petitioner and in favour of respondents per operative part of award.

Reasons for findings.

Issues no.1.

8. Ld. Counsel for petitioner contended that the petitioner had worked as daily wager with the respondent w.e.f. November, 2010 till November, 2012 and his services have been terminated orally without following the mandatory provisions of the Act. He further contended that the respondents had engaged other daily wagers in the department and retained juniors to the petitioner which is clear cut violation of the provisions of section 25-G & H of the Act and also against the principles of "last come first go" and since, the services of the petitioner were terminated in utter violation of the provisions of the Act, he deserves to be reinstated along-with all the consequential benefits including back wages.

9. On the other hand, learned ADA appearing for the respondents contended that the petitioner never served as beldar or daily wager with the respondents as the work was awarded to him after publishing advertisement and as such he had only worked on bill basis by calculating his working hours and quantum of work during the period from September, 2010 to March, 2012 and he was paid on the basis of bills raised by him duly verified by the incharge concerned, hence, the petitioner is not covered under the provisions of the Act and as such no notice or any compensation was required for his dis-engagement.

10. To prove his case, the petitioner examined two PWs including himself. The petitioner stepped into the witness box as PW-1 to depose that in the month of December, 2010, he had joined as beldar/graftner with the respondents department and his services were terminated in the month of November, 2012 without any notice and compensation. He had worked continuously from December, 2010 to November, 2012 without any break and completed 240 days in every year. He was being paid salary @ ` 3200 to ` 3300. At the time of his termination, he was assured that on the availability of work, his services would be re-engaged. Along-with him, four other beldars were also working who were regular beldars. After his termination, he is unemployed. In cross examination, he admitted that before engaging him, quotations were invited. He further admitted that some other persons also sent their quotations but the work was allotted to him. He also admitted that no record has been annexed by him to show that he had worked for more than 240 days.

11. PW-2 Shri Ranjot Singh has stated that he is working as beldar in Horticulture department and his services had been regularized w.e.f. 1998 and he knows the petitioner who had worked with him w.e.f. September, 2010 to April, 2012. In cross-examination, he expressed his ignorance that the petitioner was engaged temporarily on bill basis by the department. He denied that the work of cutting and pruning is of seasonal in nature and that the work which was allotted to the petitioner was seasonal and the services of the petitioner had been engaged on contract basis.

12. On the contrary, the respondents examined one Shri Sant Ram Sharma, Horticulture Development Officer as RW-1, who tendered his affidavit Ex. RW-1/A in examination-inchief wherein he supported all the averments as made in reply. He also tendered in evidence copies of advertisement Ex. RW-1/B-1 to Ex. RW-1/B-6, copies of bills Ex. RW-1/C-1 to Ex. RW-1/C-17 and copy of detail of bill Ex. RW-1/D. In cross-examination, he stated that the petitioner had worked under his supervision in the year, 2011 and he was doing cutting, pruning and grafting work. The services of the petitioner were taken on the availability of the work and except him no one else was engaged on quotation basis. No muster roll/ attendance register is maintained with respect to the workers on quotation basis and there are three beldars who are working in his office. The petitioner used to work with the regular beldars at times and he was paid on the basis of bills raised by him.

13. I have considered the respective contentions of the learned counsel for petitioner and learned ADA for the respondents and also scrutinized the record of the case minutely.

14. After the closer scrutiny of the record of the case, it has become clear that the work was awarded to the petitioner after publishing the advertisement Ex. RW-1/B-1 wherein quotations were invited for the work of grafting, pruning etc. on contract basis. The petitioner had submitted his quotation Ex. RW-1/B-4 and on the basis of rates given by him the work was allotted to him. In cross-examination, also the petitioner admitted that he had submitted the quotations and on the basis of rates given by him the work was allotted to him. Therefore, it is clear from the record that the services of the petitioner have not been engaged by the respondents as daily rated beldar/worker rather he had worked on contract with the respondents on bill basis. The respondents have also placed on record the copies of bills Ex. RW-1/C-1 to Ex. RW-1/C-17, which shows that the

payments for the work, done by the petitioner from time to time have been received by him which is also clear from the cross-examination of petitioner wherein he identified his signatures on the bills. Therefore, it stands duly proved on record that the services of the petitioner had not been engaged on daily wages basis but he had been engaged on the basis of need of work by inviting quotations. It has been held by the Hon'ble Supreme Court in **(2006) 6 SCC 221 incase titled as Reserve Bank Of India Vs. Gopi Nath Sharma & Another** that workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, had no right to the post. The relevant portion of the aforesaid judgment is reproduced as under:

“22. In our view, respondent No.1 was not appointed to any regular post but was only engaged on the basis of the need of the work on day to-day basis and he has no right to the post and that his dis-engagement cannot be treated as arbitrary.....”

Apart from it, it was further held in **2006 LLR 68 SC titled as Punjab State Electricity Board V. Darbara Singh and in 2006 LLR 1009 SC. titled as Municipal Council Samrala V. Surhwinder Kaur** that when material on record established that engagement of workman was for specific period as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months.

15. Thus, having regard to the above cited rulings and entire evidence on record, it can safely be concluded that the petitioner was engaged for specific period on bill basis by inviting quotations and as such it does not lie in the mouth of petitioner to claim his reengagement on the basis of his previous work with the respondent and even if it is proved on record that the petitioner had completed 240 working days in a calendar year preceding his termination even then he is not entitled to be reengaged in service by giving him the protection under section 25-F of the Industrial Disputes Act, 1947 as it is now well settled principle of law that the engagement made for specific period comes to an end by the efflux of time and the person on such post can have no right to continue on the post and it does not matter even if he had worked for more than 240 working days in any 12 calendar months preceding his termination.

16. Now, adverting to the other aspect of the case, it is also the case of the petitioner that he was terminated by the respondents in violation of the provisions of sections 25-G and H of the Act. However, since the petitioner has failed to prove on record that he was engaged as daily rated beldar/worker by the respondents, hence, the applicability of the provisions of sections 25-G & H does not arise.

17. Therefore, in view of the facts and circumstances of the present case, it cannot be said that the services of the petitioner have been illegally terminated by the respondents. Accordingly, issue No. 1 is decided in favour of the respondents and against the petitioner.

Issue No.2

18. Since, the petitioner has failed to prove issue no.1, this issue becomes redundant.

Issue no.3.

19. In support of this issue, no evidence has been led by the respondents which could go to show that the petitioner has no locus standi to file the present case. Hence, in the absence of any evidence on record, this issue is decided in favour of the petitioner and against the respondents.

Issue no.4.

20. During the course of arguments, the learned ADA has not pressed the aforesaid issue, hence, the same is decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 11th day of May, 2016.

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P.)**

Ref. 59 of 2014.

Instituted on. 11.8.2014.

Decided on 18.5.2016.

Jeet Chand S/o Shri Ram Lal R/o VPO Barang, Tehsil Kalpa, District Kinnaur, HP.

. Petitioner.

Vs.

The General Manager, Patel Engineering Ltd., Shongthong Karcham HE Project (450 MW) Near State Bank of Patiala, Village & P.O Khwangi, Tehsil Kalpa District Kinnaur, HP.

. Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Niranjan Verma, Advocate.

For respondent : Already ex-parte.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether termination of services of Shri Jeet Chand S/o Shri Ram Lal R/o VPO Barang, Tehsil Kalpa, District Kinnaur, HP by the General Manager, Patel Engineering Ltd., Shongthong Karcham HEP Project (450 MW) Near State Bank of Patiala, Village & P.O Khwangi, Tehsil Kalpa District Kinnaur, HP w.e.f. 29th /30th October, 2013 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation, the above ex-worker is entitled to from the above employer?”

2. In nutshell the case of the petitioner is that he had worked as driver LTV since 12.3.2013 to the entire satisfaction of the respondent till 29.10.2013 but his services were terminated illegally without assigning any reason, issuing any notice and conducting any enquiry w.e.f. 29.10.2013 and even no opportunity of being heard was afforded to him despite the fact that he had completed 180 days in a calendar year/preceding year being the tribal area. It is further stated that juniors to the petitioner had been retained in service by the respondent. It is also stated that the petitioner time and again requested the respondent to set aside the illegal order dated 29.10.2013 and to reinstate him but of no avail and thereafter he raised industrial dispute under section 2-A of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). Against his back drop a prayer has been made for his reinstatement in service alongwith all consequential service benefits including back-wages.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability, that the respondent being contractor does not fall within the definition of "industry", the petitioner has not approached this Court with clean hands and estoppel. On merits, it is admitted that the petitioner was working as driver LMV/LTV (Ambulance) with the respondent but it is denied that he was working w.e.f. 12.3.2013 and his services were terminated without assigning any lawful reason. It is asserted that the petitioner had joined the services w.e.f. 9.3.2013 and his services had been rightly dismissed as he was involved in repetitive acts of disobeying the orders of his superiors and spoiled the work culture of the respondent for which he was issued various show cause notices on different occasions and as such he was afforded sufficient opportunities to mend his ways and to submit his reply in writing but he failed to do so, hence, his services were terminated. The respondent prayed for the dismissal of the petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 7.10.2015.

1. Whether the termination of the services of the petitioner w.e.f. 29th /30th October, 2013 is in violation of the provisions of the Industrial Disputes Act, 1947 as alleged? . .OPP.
2. If issue no.1 is proved in affirmative to what relief of service benefits, the petitioner is entitled to? . .OPP.
3. Whether the petition is not maintainable as alleged? . .OPR.
4. Relief.

5. Besides having heard the learned counsel for the petitioner, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Yes.

Issue no.2 Entitled to reinstatement with seniority and continuity but without back-wages.

Issue no.3 No.

Relief. Reference answered in favour of the petitioner and against respondent per operative part of award.

Reasons for findings.

Issues no.1.

7. Ld. Counsel for petitioner contended that the petitioner had worked with the respondent as driver LMV w.e.f. 12.3.2013 till 29.10.2013 but his services were illegally terminated without complying with the provisions of the Act especially when being tribal area he had completed more than 180 days in twelve calendar months preceding his termination. He further contended that the respondent had retained juniors to the petitioner which is clear cut violation of the provisions of section 25-G of the Act and also against the principles of "last come first go" and since, the services of the petitioner were terminated in utter violation of the provisions of the Act, he deserves to be reinstated along-with all the consequential benefits including back wages.

8. To prove his case, the petitioner stepped into the witness box as PW-1 to depose that he was appointed as driver to drive the Ambulance on 11.3.2013 by the respondent and his work was satisfactory and no warning was ever issued to him. His services were terminated by the respondent vide office order dated 29.10.2013, Ex. PW-1/A because he raised the lawful demands of the workers and the copy of demand charter is Ex. PW-1/B. No enquiry was conducted before terminating his services. He had completed 180 days in a calendar year. In cross-examination, he denied that he had received the termination letter and that any enquiry was conducted before terminating his service.

9. Before, I proceed further, it is important to mention here that the evidence of the petitioner was closed on 4.3.2016 and thereafter the case was listed for the evidence of the respondent on 5.4.2016 on which date at the request of learned counsel for the respondent, the case was adjourned to 2.5.2016 for the evidence of the respondent but none appeared on behalf of the respondent and vide order dated 2.5.2016, the respondent was proceeded against ex-parte.

10. I have considered the contentions of the learned counsel for petitioner and also scrutinized the record of the case minutely.

11. After the closer scrutiny of the record, it has become clear that the petitioner was working as driver (Ambulance) with the respondent and admittedly he had joined the services on 9.3.2013. It is also the case of the respondent that as per office order dated 29.10.2013, the services of the petitioner were terminated. Therefore, it has become clear that the petitioner had completed 180 days (in tribal area) in twelve calendar months preceding his termination. However, the respondent in its reply has stated that the services of the petitioner were disengaged due to the reason that he was involved in acts of disobeying the orders of his superiors and has been spoiling the work culture of the respondent and he was also issued various show cause notices on different occasions for willful disobedience of the orders of his superiors, deliberately causing financial loss to the respondent and also for taking part in antiestablishment activities and even the petitioner was afforded sufficient opportunities to submit his reply but he failed to submit the same. But there is nothing on record to suggest that any opportunity of being heard was afforded to the petitioner by the respondent before terminating his services. The petitioner was never asked to answer any charges as no chargesheet was issued to him and no enquiry was held before terminating his services, on the basis of the alleged misconduct. Since, the petitioner had completed 180 days (in tribal area) in twelve calendar months preceding his termination, it was the duty of the respondent that a reasonable opportunity of being heard should have been afforded to the petitioner and proper enquiry should have been held before terminating his services. **In *D. K Yadav Vs. M/s J.M A Industries Ltd.* as reported in 1993-1 Supreme Court Service Law Judgments -221, the Hon'ble Apex Court has held as under:**

"Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service."

In a recent judgment of our **Hon'ble High Court in ILR-XLV (VI) 938 titled as Gurcharan Singh Deceased through his LR's Vs. State of HP and ors.** the workman was arrested and was convicted of the offence punishable under section 324 of the IPC and he was terminated without conducting any enquiry. The Hon'ble High Court has held that his termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under:

- “8. The moot question is whether termination can be ordered without conducting any inquiry? The answer is in the negative for the following reasons:
- 9.
- 10. While going through the impugned award and the writ petition, one comes to an inescapable conclusion that the termination of deceased Gurcharan Singh was made without following the mandate of law.
- 11.
- 12.
- 13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry was required, not to speak of only issuance of the notice.

Thus, keeping in view the law laid down (supra), the termination of the services of the petitioner without conducting any enquiry and without affording reasonable opportunity of being heard to the petitioner is in utter violation of the principles of natural justice. Moreover, before terminating the services of the petitioner, it was incumbent upon the respondent to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. **In 2010 (5) SCC 497 titled as Anoop Sharma Vs. Executive Engineer, Public Health division no.1, Panipat (Haryana),** the Hon'ble Supreme Court has held that the termination of the services of an employee by way of retrenchment without complying with the provisions of section 25-F of the Act is a nullity. The relevant extract of aforesaid judgment is reproduced as under:

- “16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.
- 17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity.....”
- 12. Therefore, in view of my aforesaid discussion, as it is clear that the petitioner had worked for more than 180 days in the tribal area in twelve calendar months preceding his

termination, the respondent was under the legal obligation to comply with the provisions of the section 25-F of the Industrial Disputes Act before terminating his services. But, no such compliance was made by the respondent, hence, there is violation of section 25-F of the Act, on the part of respondent.

13. The learned counsel of the petitioner also contended that at the time of the termination of the petitioner, the respondent had retained his juniors who are still working as such the respondent had violated the principles of "last come first go". However, no evidence has been led by him to prove that the persons junior to him have been retained by the respondent. Hence, in the absence of any evidence on record, the case of the petitioner does not fall under section 25-G of the Act.

14. Thus, having regard to my foregoing discussion and in view of law laid down (supra), I have no hesitation in coming to the conclusion that the termination of the services of the petitioner w.e.f. 29th /30th October, 2013, without conducting enquiry and without complying with the provisions of section 25-F of the Act is illegal and unjustified. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no. 2.

15. Since, I have held under issue no.1 above that the termination of services of the petitioner by the respondent without following the provisions of the Act is improper, illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity. 16. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

17. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that:

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

18. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue no. 3.

19. In support of this issue, no evidence has been led by the respondent. For the failure of the respondent to lead any evidence, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby allowed with the result, the petitioner is ordered to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to any back-wages and as such the reference is ordered to be answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 18th day of May, 2016.

*(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P.)**

Ref. 58 of 2014.

Instituted on. 11.8.2014.

Decided on 18.5.2016.

Rajvansh Lal S/o Shri Jeet Ram R/o VPO Meber (Ralli), Tehsil Kalpa, District Kinnaur,
HP. . .Petitioner.

Vs.

The General Manager, Patel Engineering Ltd., Shongthong Karcham HE Project (450 MW)
Near State Bank of Patiala, Village & P.O Khwangi, Tehsil Kalpa District Kinnaur, HP.

. .Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Niranjan Verma, Advocate.

For respondent : Already ex-parte.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether termination of services of Shri Rajvansh Lal S/o Shri Jeet Ram R/o VPO Ralli (Meber), Tehsil Kalpa, District Kinnaur, HP by the General Manager, Patel Engineering Ltd., Shongthong Karcham HEP Project (450 MW) Near State Bank of Patiala, Village & P.O Khwangi, Tehsil Kalpa District Kinnaur, HP w.e.f. 29th /30th October, 2013 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation, the above ex-worker is entitled to from the above employer?”

2. In nutshell the case of the petitioner is that he had worked as store helper since 20.1.2013 to the entire satisfaction of the respondent till 29.10.2013 but his services were terminated illegally without assigning any reason, issuing any notice and conducting any enquiry w.e.f. 29.10.2013 and even no opportunity of being heard was afforded to him despite the fact that he had completed 180 days in a calendar year/preceding year being the tribal area. It is further stated that juniors to the petitioner had been retained in service by the respondent. It is also stated that the petitioner time and again requested the respondent to set aside the illegal order dated 29.10.2013 and to reinstate him but of no avail and thereafter he raised industrial dispute under section 2-A of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). Against his back drop a prayer has been made for his reinstatement in service alongwith all consequential service benefits including back-wages.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability, that the respondent being contractor does not fall within the definition of “industry”, the petitioner has not approached this Court with clean hands and estoppel. On merits, it is admitted that the petitioner was working as store helper with the respondent but it is denied that he was working w.e.f. 20.1.2013 and his services were terminated without assigning any lawful reason. It is asserted that the petitioner had joined the services w.e.f. 20.2.2013 and his services had been rightly dismissed as he was involved in repetitive acts of disobeying the orders of his superiors and spoiled the work culture of the respondent for which he was issued various show cause notices on different occasions and as such he was afforded sufficient opportunities to mend his ways and to submit his reply in writing but he failed to do so, hence, his services were terminated. The respondent prayed for the dismissal of the petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 7.10.2015.

1. Whether the termination of the services of the petitioner w.e.f. 29th /30th October, 2013 is in violation of the provisions of the Industrial Disputes Act, 1947 as alleged? . .OPP.

2. If issue no.1 is proved in affirmative to what relief of service benefits, the petitioner is entitled to? . .OPP.

3. Whether the petition is not maintainable as alleged? . .OPR.

4. Relief.

5. Besides having heard the learned counsel for the petitioner, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Yes.

Issue no.2 Entitled to reinstatement with seniority and continuity but without back-wages.

Issue no.3 No.

Relief. Reference answered in favour of the petitioner and against respondent per operative part of award.

Reasons for findings.

Issues no.1.

7. Ld. Counsel for petitioner contended that the petitioner had worked with the respondent as store helper w.e.f. 20.1.2013 till 29.10.2013 but his services were illegally terminated without complying with the provisions of the Act especially when being tribal area he had completed more than 180 days in twelve calendar months preceding his termination. He further contended that the respondent had retained juniors to the petitioner which is clear cut violation of the provisions of section 25-G of the Act and also against the principles of "last come first go" and since, the services of the petitioner were terminated in utter violation of the provisions of the Act, he deserves to be reinstated along-with all the consequential benefits including back wages.

8. To prove his case, the petitioner stepped into the witness box as PW-1 to depose that he was appointed as store helper on 20.1.2013 by the respondent and on 28.10.2013, they have submitted the demand charter to the management regarding the implementation of Labour Laws in the respondent company. His services were terminated by the respondent on 29.10.2013 without complying with the mandatory provisions of the Act as neither any notice was served nor any enquiry was conducted against him and even no compensation was paid to him. He had worked w.e.f. 20.1.2013 till 29.10.2013 and completed 180 days in a calendar year. He had worked in tribal area and his termination letter is mark PA. His junior Shri Chet Ram is still working with the respondent management. In cross-examination, he denied that the company had issued any show cause notice to him. He further denied that his services were terminated after holding enquiry.

9. Before, I proceed further, it is important to mention here that the evidence of the petitioner was closed on 4.3.2016 and thereafter the case was listed for the evidence of the respondent on 5.4.2016 on which date at the request of learned counsel for the respondent, the case was adjourned to 2.5.2016 for the evidence of the respondent but none appeared on behalf of the respondent and vide order dated 2.5.2016, the respondent was proceeded against ex-parte.

10. I have considered the contentions of the learned counsel for petitioner and also scrutinized the record of the case minutely.

11. After the closer scrutiny of the record, it has become clear that the petitioner was working as a store helper with the respondent and admittedly he had joined the services on 20.2.2013. It is also the case of the respondent that as per office order dated 29.10.2013, the services of the petitioner were terminated. Therefore, it has become clear that the petitioner had completed 180 days (in tribal area) in twelve calendar months preceding his termination. However, the respondent in its reply has stated that the services of the petitioner were disengaged due to the reason that he was involved in acts of disobeying the orders of his superiors and has been spoiling the work culture of the respondent and he was also issued various show cause notices on different occasions for willful disobedience of the orders of his superiors, deliberately causing financial loss to the respondent and also for taking part in antiestablishment activities and even the petitioner was afforded sufficient opportunities to submit his reply but he failed to submit the same. But there is

nothing on record to suggest that any opportunity of being heard was afforded to the petitioner by the respondent before terminating his services. The petitioner was never asked to answer any charges as no chargesheet was issued to him and no enquiry was held before terminating his services, on the basis of the alleged misconduct. Since, the petitioner had completed 180 days (in tribal area) in twelve calendar months preceding his termination, it was the duty of the respondent that a reasonable opportunity of being heard should have been afforded to the petitioner and proper enquiry should have been held before terminating his services. **In D. K Yadav Vs. M/s J.M A Industries Ltd. as reported in 1993-1 Supreme Court Service Law Judgments -221**, the Hon'ble Apex Court has held as under:

“Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service.”

In a recent judgment of our Hon'ble High Court in **ILR-XLV (VI) 938 titled as Gurcharan Singh Deceased through his LR's Vs. State of HP and ors.** the workman was arrested and was convicted of the offence punishable under section 324 of the IPC and he was terminated without conducting any enquiry. The Hon'ble High Court has held that his termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under:

- “8. The moot question is whether termination can be ordered without conducting any inquiry? The answer is in the negative for the following reasons:
- 9.
- 10. While going through the impugned award and the writ petition, one comes to an inescapable conclusion that the termination of deceased Gurcharan Singh was made without following the mandate of law.
- 11.
- 12.
- 13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry was required, not to speak of only issuance of the notice.

Thus, keeping in view the law laid down (supra), the termination of the services of the petitioner without conducting any enquiry and without affording reasonable opportunity of being heard to the petitioner is in utter violation of the principles of natural justice. Moreover, before terminating the services of the petitioner, it was incumbent upon the respondent to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. **In 2010 (5) SCC 497 titled as Anoop Sharma Vs. Executive Engineer, Public Health division no.1, Panipat (Haryana)**, the Hon'ble Supreme Court has held that the termination of the services of an employee by way of retrenchment without complying with the provisions of section 25-F of the Act is a nullity. The relevant extract of aforesaid judgment is reproduced as under:

- “16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an

employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity.....”

12. Therefore, in view of my aforesaid discussion, as it is clear that the petitioner had worked for more than 180 days in the tribal area in twelve calendar months preceding his termination, the respondent was under the legal obligation to comply with the provisions of the section 25-F of the Industrial Disputes Act before terminating his services. But, no such compliance was made by the respondent, hence, there is violation of section 25-F of the Act, on the part of respondent.

13. The learned counsel of the petitioner also contended that at the time of the termination of the petitioner, the respondent had retained his juniors who are still working as such the respondent had violated the principles of “last come first go”. However, except for the bald statement of the petitioner as PW-1, no other evidence has been led by him to prove that the persons junior to him have been retained by the respondent. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G of the Act.

14. Thus, having regard to my foregoing discussion and in view of law laid down (supra), I have no hesitation in coming to the conclusion that the termination of the services of the petitioner w.e.f. 29th /30th October, 2013, without conducting enquiry and without complying with the provisions of section 25-F of the Act is illegal and unjustified. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no. 2.

15. Since, I have held under issue no.1 above that the termination of services of the petitioner by the respondent without following the provisions of the Act is improper, illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

16. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

17. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that:

“16.When, the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

18. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue no.3.

19. In support of this issue, no evidence has been led by the respondent. For the failure of the respondent to lead any evidence, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby allowed with the result, the petitioner is ordered to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to any back-wages and as such the reference is ordered to be answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 18th day of May, 2016.

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P.)

Ref. 60 of 2014.

Instituted on. 11.8.2014.

Decided on 18.5.2016.

Kuldeep S/o Shri Jeet Ram R/o Village Powari, P.O Shongtong, Tehsil Kalpa, District Kinnaur, HP. *Petitioner.*

Vs.

The General Manager, Patel Engineering Ltd., Shongthong Karcham HE Project (450 MW)
Near State Bank of Patiala, Village & P.O Khwangi, Tehsil Kalpa District Kinnaur, HP.

. Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Niranjan Verma, Advocate.

For respondent : Already ex-parte.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether termination of services of Shri Kuldeep S/o Shri Jeet Ram R/o Village Powari, P.O Shongtong, Tehsil Kalpa, District Kinnaur, HP by the General Manager, Patel Engineering Ltd., Shongthong Karcham HEP Project (450 MW) Near State Bank of Patiala, Village & P.O Khwangi, Tehsil Kalpa District Kinnaur, HP w.e.f. 29th /30th October, 2013 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation, the above ex-worker is entitled to from the above employer?”

2. In nutshell the case of the petitioner is that he had worked as heavy vehicle driver since 11.3.2013 to the entire satisfaction of the respondent till 29.10.2013 but his services were terminated illegally without assigning any reason, issuing any notice and conducting any enquiry w.e.f. 29.10.2013 and even no opportunity of being heard was afforded to him despite the fact that he had completed 180 days in a calendar year/preceding year being the tribal area. It is further stated that juniors to the petitioner had been retained in service by the respondent. It is also stated that the petitioner time and again requested the respondent to set aside the illegal order dated 29.10.2013 and to reinstate him but of no avail and thereafter he raised industrial dispute under section 2-A of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). Against his back drop a prayer has been made for his reinstatement in service along-with all consequential service benefits including back-wages.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability, that the respondent being contractor does not fall within the definition of “industry”, the petitioner has not approached this Court with clean hands and estoppel. On merits, it is admitted that the petitioner was working as heavy vehicle driver with the respondent but it is denied that he was working w.e.f. 11.3.2013 and his services were terminated without assigning any lawful reason. It is asserted that the petitioner had joined the services w.e.f. 2.3.2013 and his services had been rightly dismissed as he was involved in repetitive acts of disobeying the orders of his superiors and spoiled the work culture of the respondent for which he was issued various show cause notices on different occasions and as such he was afforded sufficient opportunities to mend his ways and to submit his reply in writing but he failed to do so, hence, his services were terminated. The respondent prayed for the dismissal of the petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 7.10.2015.

1. Whether the termination of the services of the petitioner w.e.f. 29th /30th October, 2013 is in violation of the provisions of the Industrial Disputes Act, 1947 as alleged? . .OPP.

2. If issue no.1 is proved in affirmative to what relief of service benefits, the petitioner is entitled to? . .OPP.

3. Whether the petition is not maintainable as alleged? . .OPR.

4. Relief.

5. Besides having heard the learned counsel for the petitioner, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Yes.

Issue no.2 Entitled to reinstatement with seniority and continuity but without back-wages.

Issue no.3 No.

Relief. Reference answered in favour of the petitioner and against respondent per operative part of award.

Reasons for findings

Issues no. 1

7. Ld. Counsel for petitioner contended that the petitioner had worked with the respondent as heavy vehicle driver w.e.f. 11.3.2013 till 29.10.2013 but his services were illegally terminated without complying with the provisions of the Act especially when being tribal area he had completed more than 180 days in twelve calendar months preceding his termination. He further contended that the respondent had retained juniors to the petitioner which is clear cut violation of the provisions of section 25-G of the Act and also against the principles of “last come first go” and since, the services of the petitioner were terminated in utter violation of the provisions of the Act, he deserves to be reinstated along-with all the consequential benefits including back wages.

8. To prove his case, the petitioner stepped into the witness box as PW-1 to depose that he was appointed as driver on 11.3.2013 by the respondent and on 28.10.2013, they have submitted the demand charter to the management regarding the implementation of Labour Laws in the respondent company. His services were terminated by the respondent on 29.10.2013 without complying with the mandatory provisions of the Act as neither any notice was served nor any enquiry was conducted against him and even no compensation was paid to him. He had worked w.e.f. 11.3.2013 till 29.10.2013 and completed 180 days in a calendar year. He had worked in tribal area and his termination letter is mark PA. His juniors S/Shri Jai Pal Rajesh Kumar and Dharmender are still working with the respondent management. In cross-examination, he denied that the company had issued any show cause notice to him. He further denied that his services were terminated after holding enquiry.

9. Before, I proceed further, it is important to mention here that the evidence of the petitioner was closed on 4.3.2016 and thereafter the case was listed for the evidence of the respondent on 5.4.2016 on which date at the request of learned counsel for the respondent, the case was adjourned to 2.5.2016 for the evidence of the respondent but none appeared on behalf of the respondent and vide order dated 2.5.2016, the respondent was proceeded against ex-parte.

10. I have considered the contentions of the learned counsel for petitioner and also scrutinized the record of the case minutely.

11. After the closer scrutiny of the record, it has become clear that the petitioner was working as heavy vehicle driver with the respondent and admittedly he had joined the services on 2.3.2013. It is also the case of the respondent that as per office order dated 29.10.2013, the services of the petitioner were terminated. Therefore, it has become clear that the petitioner had completed 180 days (in tribal area) in twelve calendar months preceding his termination. However, the respondent in its reply has stated that the services of the petitioner were disengaged due to the reason that he was involved in acts of disobeying the orders of his superiors and has been spoiling the work culture of the respondent and he was also issued various show cause notices on different occasions for willful disobedience of the orders of his superiors, deliberately causing financial loss to the respondent and also for taking part in antiestablishment activities and even the petitioner was afforded sufficient opportunities to submit his reply but he failed to submit the same. But there is nothing on record to suggest that any opportunity of being heard was afforded to the petitioner by the respondent before terminating his services. The petitioner was never asked to answer any charges as no chargesheet was issued to him and no enquiry was held before terminating his services, on the basis of the alleged misconduct. Since, the petitioner had completed 180 days (in tribal area) in twelve calendar months preceding his termination, it was the duty of the respondent that a reasonable opportunity of being heard should have been afforded to the petitioner and proper enquiry should have been held before terminating his services. **In D. K Yadav Vs. M/s J.M A Industries Ltd. as reported in 1993-1 Supreme Court Service Law Judgments -221, the Hon'ble Apex Court has held as under:**

“Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service.”

In a recent judgment of our **Hon'ble High Court in ILR-XLV (VI) 938 titled as Gurcharan Singh Deceased through his LR's Vs. State of HP and ors.** the workman was arrested and was convicted of the offence punishable under section 324 of the IPC and he was terminated without conducting any enquiry. The Hon'ble High Court has held that his termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under:

“8. The moot question is whether termination can be ordered without conducting any inquiry? The answer is in the negative for the following reasons:

9.

10. While going through the impugned award and the writ petition, one comes to an inescapable conclusion that the termination of deceased Gurcharan Singh was made without following the mandate of law.

11.

12.

13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry was required, not to speak of only issuance of the notice.

Thus, keeping in view the law laid down (supra), the termination of the services of the petitioner without conducting any enquiry and without affording reasonable opportunity of being heard to the petitioner is in utter violation of the principles of natural justice. Moreover, before terminating the services of the petitioner, it was incumbent upon the respondent to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. **In 2010 (5) SCC 497 titled as Anoop Sharma Vs. Executive Engineer, Public Health division no.1, Panipat (Haryana)**, the Hon'ble Supreme Court has held that the termination of the services of an employee by way of retrenchment without complying with the provisions of section 25-F of the Act is a nullity. The relevant extract of aforesaid judgment is reproduced as under:

“16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity.....”

12. Therefore, in view of my aforesaid discussion, as it is clear that the petitioner had worked for more than 180 days in the tribal area in twelve calendar months preceding his termination, the respondent was under the legal obligation to comply with the provisions of the section 25-F of the Industrial Disputes Act before terminating his services. But, no such compliance was made by the respondent, hence, there is violation of section 25-F of the Act, on the part of respondent.

13. The learned counsel of the petitioner also contended that at the time of the termination of the petitioner, the respondent had retained his juniors who are still working as such the respondent had violated the principles of “last come first go”. However, except for the bald statement of the petitioner as PW-1, no other evidence has been led by him to prove that the persons junior to him have been retained by the respondent. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G of the Act.

14. Thus, having regard to my foregoing discussion and in view of law laid down (supra), I have no hesitation in coming to the conclusion that the termination of the services of the petitioner w.e.f. 29th /30th October, 2013, without conducting enquiry and without complying with the provisions of section 25-F of the Act is illegal and unjustified. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no. 2.

15. Since, I have held under issue no.1 above that the termination of services of the petitioner by the respondent without following the provisions of the Act is improper, illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

16. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

17. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that:

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

18. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue no. 3.

19. In support of this issue, no evidence has been led by the respondent. For the failure of the respondent to lead any evidence, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby allowed with the result, the petitioner is ordered to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to any back-wages and as such the reference is ordered to be answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 18th day of May, 2016.

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

2.5.2016.

Present: None for the petitioner.

Shri R.K Khidta, Advocate for respondent.

It is 10: 30 AM. Case called twice but none appeared on behalf of the petitioner. Be called again.

(Sushil Kukreja)
Presiding Judge,
Labour Court, Shimla.

Case called again.

Present: None for the petitioner.

Shri R.K Khidta, Advocate for respondent.

It is 12:55 PM case called again but none appeared on behalf of the petitioner. Be called after lunch.

(Sushil Kukreja)
Presiding Judge,
Labour Court, Shimla.

Case called after lunch.

Present: None for the petitioner.

Shri R.K Khidta, Advocate for respondent.

It is 3:40 PM. Case called repeatedly in pre and post lunch sessions but none appeared on behalf of the petitioner despite the fact that for today, the case was listed for filing of claim being last opportunity but neither the petitioner nor his counsel appeared before this Court and to file claim petition which shows that the petitioner is not interested to pursue his claim arising out of the reference which has been sent by the appropriate government to this Court for adjudication, hence, this Court is left with no other alternative but to decide the reference on the basis of material whatsoever available on file. The reference sent by the appropriate government for adjudication is as under:

“Whether termination of the services of Shri Rajesh Kumar S/o Shri RoshanLal R/o Village Patta, P.O Kallar, TehsilSadar, District Bilaspur HP w.e.f. 3.6.2012 by the Managing Director/Employer, M/s Pyramid Electronics, Village Snade, P.O Manpura, Tehsil Nalagarh, District Solan, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

In the absence of any claim petition and evidence on behalf of petitioner, it cannot be held that the termination of the services of petitioner w.e.f. 3.6.2012 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified. Hence, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
2.5.2016.

(SushilKukreja)
*Presiding Judge,
Labour Court, Shimla.*

5.5.2016.

Present: None.

This case is being listed for the service of the petitioner from 17.3.2015 and thereafter as many as eight times the notices were issued/sent for the service of the petitioner on the address given by the Labour Commissioner on reference itself. Today, also the case is listed for the service of petitioner. The notice issued to the petitioner received back with the report that the petitioner is working in some company at Rajasthan and the notice has been duly received by his wife at the given address. Therefore, it is deemed to be a proper service as per the provision contained in order 5 rule 15 CPC. The notice was also sent to the petitioner through registered AD and the postal acknowledgement has also been received back duly served. Moreover, it is relevant to mention that the Labour Commissioner has also informed the petitioner about the present reference by sending a copy of this reference to him. So, petitioner was having knowledge that the reference was sent to this Court by the Labour Commissioner. Thus, he could have himself appeared before this Court in order to file his claim.

In the light of aforesaid facts, it appears that the petitioner is not interested to pursue his claim. Therefore, to further adjourn the case would be a futile exercise. The following reference qua the termination of services of petitioner was received from appropriate government for adjudication:

“Whether termination of the services of Shri Onkar Chand S/Shri BihariLal R/o Village Ramed, P.O Ramed, Tehsil and District Kangra, HP w.e.f. 12/17.9.2013 by the Employer/ General Manager M/s Cabcom Cable Ltd., Suketi Road Kala Amb Tehsil Nahan District Sirmour, HP without complying with the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

However, in the absence of any claim petition and evidence on behalf of petitioner, it cannot be held that his services were wrongly and illegally terminated by the respondent. Hence,

the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:

5.5.2016.

(SushilKukreja)
Presiding Judge,
Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P.)**

Ref. No. 14 of 2011.

Instituted on. 26.5.2011.

Decided on 20.5.2016.

1. Pritam Chand s/o Shri Lehar Chand, R/o Village Jhamech, P.O Balakropi, Tehsil Jaisinghpur, District Kangra, HP.
2. Rajiv Shah S/o Shri Uttam Shah R/o Basantbihar House no. 1899, Kalka, District Panchkula Haryana.
3. Sanjeev Kumar C/o Kapril Electronics, Sai Road Baddi, Near UCO Bank Tehsil Nalagarh, District Solan HP.
4. Bhagat Ram S/o Shri Balelu Ram, R/o Village Kalami, P.O Bhakhra, Tehsil Sri Naina Devi Ji, District Bilaspur, HP.
5. Shri Bali Mohd., S/o Shri Shafi Mohd., R/o Village Jhinda, P.O Nanakpur, Tehsil Kalka, District Panchkula, Haryana.
6. Surinder Singh S/o Shri Iqbal Singh R/o Village Jhainda, P.O Nanakpur, Tehsil Kalka, District Panchkula, Haryana.
7. Joginder Singh S/o Shri Lachha Ram R/o Village Khulni, P.O Bhakhra, Tehsil Shir Naina Devi, District Bilaspur, HP.
8. Anand Ram S/o Shri Negi Ram R/o Village Veturighar, P.O Deghah, Tehsil MJikosin, District Almorah, Uttranchal.
9. Kuldeep Singh S/o Shri Bhala R/o Village & P.O Chimor, Tehsil Dehra District Kangra, HP.
10. Bhupinder Singh S/o Shri Krishan Chand R/o Village Bihara, P.O Bhatar, Tehsil Amb, District Una, HP.

.Petitioners.

Vs.

The Manager M/s Kandri Beverages, Ltd., Kasha Baddi, District Solan, HP. .Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.**For petitioners :** Shri R.K Khidtta, Advocate.**For respondent :** Shri Rajesh Kashyap, Advocate.**AWARD**

The following reference has been sent by the appropriate government for adjudication:

“Whether termination of the services of Shri Pritam Chand S/o Shri Lehar Chand & ten others workman (list attached) by the Manager M/s Kandhari Beverages Ltd., Village Kasha Baddi, District Solan, HP w.e.f. 7.3.2006 without complying with the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. Before, I proceed further, it is important to mention here that vide order dated 3.6.2014, the name of original petitioner no.3 Surinder Singh (since deceased) has been deleted and the common reference, aforesaid, was decided against him for the failure of his LR's to move this Court in order to bring them on record. It is also important to mention here that a common reference has been sent by the appropriate Government on behalf of eleven workmen including Shri Pritam Chand & 10 others to the Ld. Presiding Judge, HP Industrial Tribunal/Labour Court, Dharamshala where the same was tried and when the reference was listed for the remaining evidence of the respondent, the same was sent to this Court vide order dated 21.12.2010 on the point of jurisdiction and thereafter the reference was reregistered in this Court. Earlier all the eleven workers have filed separate statements of claims before the Ld. Labour Court, Dharamshala which were lateron amended vide order dated 4.9.2014.

3. Facts in brief as narrated in all the claim petitions filed by the petitioners, which are necessary for deciding/answering the present reference are as under:

4. All the petitioners have been employed on regular basis as helpers by the respondent on the basis of qualification and completing all the necessary formalities. Petitioners S/Shri Joginder Singh (petitioner no. 8), Bhupinder Singh (petitioner no. 11), Bhagat Ram (petitioner no. 5), were appointed as helpers in the month of March, 1999, petitioners S/Shri Rajiv Singh (petitioner no. 2), Pritam Chand (petitioner no.1), Sanjeev Kumar (petitioner no.4), Anand Ram (petitioner no.9), Surinder Singh (petitioner no.7), and Kuldeep Singh (petitioner no.10) were appointed as helpers in the year, 1998 and Shri Bali Mohd. (petitioner no. 6), was appointed as helper in the month of March 2002. The petitioners have worked for more than 240 days with the respondent company in the each calendar year and despite the fact that there was lot of work available with the respondent company, the services of the petitioners have been terminated by an order w.e.f. 6.3.2006 in utter violation of the mandatory provisions of law as envisaged under Industrial Disputes Act, (hereinafter referred as Act) more specifically sections 25-B, 25-F, 25-G & H of the Act and even no opportunity of being heard was afforded to the petitioners before terminating their services. It is further stated in the claim petitions that before issuing the chargesheet no show cause notice was issued by the respondent company and not only this no fair and proper enquiry was conducted. The enquiry officer had not conducted the enquiry fairly as proper opportunity to defend the case was not given to the petitioners and principles of natural justice was also not followed by the enquiry officer as such the report of the enquiry officer cannot be looked into. Not only this, the punishment of the dismissal of the petitioners is also disproportionate. While terminating the services of the petitioners, the demand notices dated

26.9.2005 and 5.10.2005 submitted by the petitioners and other workers were pending adjudication before the conciliation officer and the respondent company had not taken the approval/permission from this Court as such the termination of the services of the petitioners is illegal and the same deserves to be declared as null & void. The respondent company had not followed the mandatory and statutory provisions as contained under section 25-F of the Act as such on this score also the termination was illegal, null & void. It is further asserted that after the illegal termination of the petitioners, the respondent company retained juniors to them and also engaged fresh hands in violation of the provisions of sections 25-G and 25-H of the Act. Against this back-drop a common prayer has been made by all the petitioners to set aside the termination order dated 7.3.2006 and to re-instate them with all the consequential service benefits including back-wages.

5. By filing a reply on behalf of Pritam Chand, the respondent had contested the claims of the petitioners wherein preliminary objections had been taken qua maintainability, the petitioner had not approached this Court with clean hands and that this Court has no jurisdiction to try and decide the claim petition. On merits, it has been denied that the petitioner carried out the work honestly, diligently, attentively and with great zeal without any complaint. The services of the petitioner had been terminated as punishment for misconduct by way of disciplinary action on the basis of proper enquiry conducted after giving adequate opportunity of being heard to the petitioner. It is admitted that the petitioner had worked for more than 240 days in each calendar year and the work was of continuous nature. It is asserted that the chargesheet dated 6.12.2005 was issued to the petitioner which was duly replied by him on 26.12.2005 but the reply of the petitioner was not found satisfactory and domestic enquiry was conducted and the services of the petitioner were terminated after giving adequate opportunity of being heard to the petitioner. It is denied that before issuing the chargesheet, no show cause notice was issued to the petitioner. Since, the services of the petitioner had been terminated on the basis of enquiry, hence, the question of preference to the retrenched workers under section 25-H does not arise. The petitioner was assigned the duty of inspecting the empty as well as filled bottles during its online process but due to continuous willful negligence and carelessness, the petitioner failed to remove/reject dirty bottles while performing the duty of bottle inspection and consequently dirty bottles started getting filled up and finally entered in to the market and the petitioner was warned verbally for the negligent working attitude at many occasions but the petitioner failed to improve his working attitude despite proper training, hence, he was chargesheeted after following the proper procedure of law. It is further asserted that the application filed under sub section 2 of section 33 of the Act before the Conciliation Officer Baddi is already on record. The respondent prayed for the dismissal of the claim petition.

6. Vide separate statement recorded on 4.7.2014, the learned counsel for the respondent has stated that the reply filed to the claim of Pritam Chand be read as reply to the claim of all other petitioners.

7. By filing a common rejoinder to the amended reply, the petitioners have reiterated allegations as made in the claim petitions by denying those of the respondent.

8. Pleadings of the parties gave rise to the following issues which were struck on 1.4.2009 by the Industrial Tribunal-cum-Labour Court, Dharamshala.

41. Whether the termination of services of the petitioners by the respondent is unlawful? If so, what relief the petitioners are entitled to? . .OPP.
42. Whether the termination of services of the petitioners by the respondent does not amount to "retrenchment" as defined under section 2 (oo) of the Industrial Disputes Act, 1947? . .OPR.

43. Whether the reference is not maintainable?

. .OPR.

44. Relief.

9. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Yes.

Issue no.2 No.

Issue no.3 No.

Relief. Reference answered in favour of the petitioners and against the respondent per operative part of award.

Reasons for findings.

Issues no.1 & 2.

11. The petitioner Shri Pritam Chand has appeared into the witness box as PW-1 and tendered his affidavit Ex. PW-1/A in evidence wherein he supported almost all the averments as stated in the claim petition. He also tendered in evidence documents Ex. PW-1/B to Ex. PW-1/K. In crossexamination, he admitted that he was chargesheeted on 6.12.2005 and enquiry was got conducted against him. He further admitted that on the basis of enquiry, he was terminated. He denied that separate enquires had been conducted against all the petitioners but explained that a joint enquiry was conducted. He denied that he had not performed his work honestly.

12. Petitioner Shri Rajiv Shah, stepped into the witness box as PW-2 and tendered his affidavit Ex. PW-2/A in evidence. He also tendered in evidence documents Ex. PW-2/B to Ex. PW-2/K. Petitioner Shri Surinder Singh, stepped into the witness box as PW-3 and tendered his affidavit Ex. PW-3/A in evidence. He also tendered in evidence documents Ex. PW-3/B to Ex. PW 3/K. Petitioner Shri Sanjeev Kumar, stepped into the witness box as PW-4 and tendered his affidavit Ex. PW-4/A in evidence. He also tendered in evidence documents Ex. PW-4/B to Ex. PW 4/K. Petitioner Shri Bhagat Ram, stepped into the witness box as PW-5 and tendered his affidavit Ex. PW-5/A in evidence. He also tendered in evidence documents Ex. PW-5/B to Ex. PW-5/K. Petitioner Shri Bali Mohd, stepped into the witness box as PW-6 and tendered his affidavit Ex. PW 6/A in evidence. He also tendered in evidence documents Ex. PW-6/B to Ex. PW-6/K. Petitioner Shri Surinder Singh, stepped into the witness box as PW-7 and tendered his affidavit Ex. PW-7/A in evidence. He also tendered in evidence documents Ex. PW-7/B to Ex. PW-7/J. Petitioner Shri Joginder Singh, stepped into the witness box as PW-8 and tendered his affidavit Ex. PW-8/A in evidence. He also tendered in evidence documents Ex. PW-8/B to Ex. PW-8/I. Petitioner Shri Anand Ram, stepped into the witness box as PW-9 and tendered his affidavit Ex. PW-9/A in evidence. He also tendered in evidence documents Ex. PW-9/B to Ex. PW-9/J. Petitioner Shri Bhupinder Singh, stepped into the witness box as PW-10 and tendered his affidavit Ex. PW-10/A in evidence. He also tendered in evidence documents Ex. PW-10/B to Ex. PW-10/K. All the petitioners, aforesaid, have been cross-examined on the same grounds as petitioner Shri Pritam Chand was crossexamined.

13. Thereafter, on allowing the application filed under order 6 rule 17 CPC vide order dated 4.9.2014, the petitioners have examined two PWs. Petitioner, Shri Pritam Chand again appeared in the witness box as PW-11 and has stated that he along-with nine/ten other workers were terminated on the basis of false allegations. They all were appointed as operators. The work of bottle inspection was not their work which was being done by the workers who have been engaged on contract basis. Before issuing chargesheet no show cause notice was given to them. A joint enquiry had been conducted by the enquiry officer against them and their consent in this regard had not been obtained. Before starting of enquiry, the enquiry officer had not made known to them about the procedure of enquiry. They were not afforded opportunity of being heard. The enquiry had been conducted by the enquiry officer at the instance of the management. At the time of their termination, two demand notices dated 26.9.2005 & 5.10.2005 were pending before the Labour Officer and no permission had been taken by the respondent before terminating their services. After their termination, all the petitioners are unemployed. In cross-examination, he admitted that they were doing the work of filling the bottles. He denied that regarding his work, a show cause notice was issued by the company to him and other petitioners. He denied that he and other workers had not filed reply to the show cause notice. He admitted that a joint enquiry had been conducted against them. He denied that the enquiry had been conducted fairly. He admitted that they have appeared before the enquiry officer through their Representative Shri Shyam Singh. He denied that the charges leveled against them have been proved. He admitted that at the time of termination, they have been paid one month's salary. He denied that they had not raised the demand notice. After the termination, he had been working at Balakrupi, District Kangra. He further admitted that all other terminated petitioners are also working.

14. PW-12, Shri Devinder Kumar, Clerk O/o Labour Officer, Solan has stated that the petitioners had raised a demand notice Ex. PW-1/F, which was pending in their office. In crossexamination, he stated that on the demand notice, the labour inspector, Baddi was directed to take action and the report of labour inspector had been received on 6.1.2006 and the same was forwarded to Labour Commissioner on 24.1.2006.

15. On the contrary, the respondent examined two RWs. RW-1 Shri S.K Grover, Vice President Technical has tendered his affidavit Ex. RW-1/A examination- in-chief wherein he supported all the averments as made in the reply. He also tendered in evidence documents Ex. R-1 to Ex. R-22. In cross-examination, he admitted that the petitioners had worked for more than 240 days in each calendar year. He further admitted that till the end of year 2004, there were no complaints against the petitioners. He also admitted that the petitioners had raised a joint demand notice Ex. PW-1/F on 26.9.2005. He expressed his ignorance that except Bali Mohd. Bhupinder and Rajiv Saha all other petitioners were deputed in bottle inspection section. He denied that the company had pressurized the 24 workers to withdraw their demand notice. He further denied that since the petitioners had not settled their dispute with the company, hence, a joint enquiry had been conducted against them. He admitted that the work of bottle inspection was not an independent work which was done as a team work. He denied that after issuance of chargesheet the petitioners were not afforded opportunity to file reply and the enquiry report had not been given to them. He admitted that after the termination of the petitioners, the company had engaged other workers.

16. RW-2 Shri M.R Dhiman, Enquiry Officer has tendered his affidavit Ex. RW-2/A in evidence wherein he has stated that he was appointed as an enquiry officer by the respondent company and proper opportunity had been afforded to the petitioners to defend themselves. The petitioners filed their reply to the chargesheet and the principles of natural justice were also observed and he conducted the enquiry in fair and proper manner and after the conclusion of the enquiry proceedings, findings report was submitted on 25.2.2006 and all the charges leveled against the petitioners were fully proved. The services of the petitioner were terminated on the basis of enquiry report and keeping in view the gravity of misconduct committed by them. The petitioners

were never chargesheeted behind the back. In cross examination, he admitted that there were 36 workers working in the bottle inspection in two shifts. He admitted that the work of petitioners was of technical nature. He admitted that a joint enquiry had been conducted against the petitioners. He admitted that on the basis of statement of petitioner Surinder Singh, the enquiry had been conducted and the statement of Surinder Singh had been read on behalf of all other petitioners. He admitted that the same charges have been leveled against all the petitioners. He denied that a joint enquiry report had been given. He denied that a wrong enquiry report had been prepared by him.

17. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof, it has become clear that all the petitioners were the employees of the respondent and all of them have been terminated w.e.f. 7.3.2006. It is also not disputed that all the petitioners had worked for more than 240 days in each calendar year and the work was continuous in nature. It is also the admitted case that a separate chargesheet dated 6.12.2005 was issued to each of the petitioners leveling therein allegations of misconduct and the petitioners have filed reply on 26.12.2005 to each chargesheet. But as the reply of the petitioners was not found satisfactory by the respondent, therefore, a domestic enquiry was ordered to be conducted against all the petitioners and accordingly Shri M.R Dhiman, Advocate was appointed as an enquiry officer to enquire into the charges leveled against them in respect of the chargesheet issued to each of the petitioners. After conclusion of the enquiry, the enquiry officer had submitted separate reports dated 25.2.2006 against each of the petitioners and all the charges leveled against the petitioners stood proved as such they were terminated w.e.f. 7.3.2006 vide termination letters Ex. PW-1/D, Ex. PW-2/D, Ex. PW-3/D, Ex. PW-4/D, Ex. PW-5/D, Ex. PW-6/D and PW-10/D. Feeling aggrieved, the petitioners raised the demand notice before the Labour-cum-conciliation Officer and after the failure of the conciliation proceedings, the present reference was sent by the appropriate government to this Court.

18. The learned counsel for the petitioners contended that there was a violation of the principles of natural justice in the instant case as the enquiry officer did not allow the petitioners to be represented through a co-worker. Not only this, the enquiry officer also did not allow the petitioners to lead defence evidence. The enquiry officer had not conducted the separate enquiries and before starting the joint enquiry, the enquiry officer did not take the consent of the petitioners for initiation of joint enquiry which resulted in denial of justice to the petitioners as the petitioners could not get the proper opportunity to defend their case. Hence, the enquiry, which was got conducted against the petitioners cannot be said to have been conducted by following the principles of natural justice and for this reason, it requires to be set aside.

19. On the other hand, Ld. Counsel for the respondent contended that on the basis of proper and fair enquiry, which had been conducted in accordance with the principles of natural justice, the charges against the petitioners stood proved and thereafter, their services were terminated in accordance with law. He further contended that the petitioners had been served with the chargesheet and they were afforded opportunity to be represented by a defence assistant and the opportunity to cross examine the witnesses was also given to them. Thus, it cannot be said that the Enquiry Officer had not followed the prescribed procedure as per the principles of natural justice as such no fault can be found in the enquiry, so conducted against the petitioners and the punishment, imposed upon them.

20. Now, the question which arises for consideration is as to whether the domestic enquiry conducted against the petitioners is unfair and violative of principles of natural justice. It is a settled proposition of law that the technicalities of the evidence Act are not applicable in the domestic enquiry but at the same time it is also true that the domestic enquiry is not an empty formality and the principles of natural justice have to be followed. In **State of Haryana Vs. Rattan Singh (1977) 2 SCC 491**, it has been held by the Hon'ble Apex Court as under:

“In a domestic enquiry all the strict and sophisticated rules of the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible, though departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations, and observance of rules of natural justice. Fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment, vitiate the conclusion reached, such a finding, even of a domestic tribunal, cannot be held to be good. The simple point in all these cases is, was there some evidence or was there no evidence—not in the sense of the technical rules governing Court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny by court, while absence of any evidence in support of the finding is an error of law apparent on the record and the court can interfere with the finding”.

21. The first contention of the learned counsel for the petitioners is to the effect that while conducting the enquiry the enquiry officer did not allow the petitioners to be represented through their co-worker in the proceedings and the same amounted to the violation of the principles of natural justice. However, this contention of the learned counsel for the petitioners is devoid of any force as the basic principle of the domestic enquiry is that the employees have no right to be represented in the domestic enquiry by any other person or a lawyer unless the rules specifically provide for the same. In the present case, as per enquiry report the petitioners had filed a joint application before the enquiry officer to allow them to be represented through Shri Shyam Singh who was an outsider and was not the co-worker and the enquiry officer allowed Shri Shyam Singh to represent all the petitioners in the enquiry. Admittedly, no request was made by the petitioners to the enquiry officer that they should be allowed to be represented by a co-worker. Even otherwise non-permitting the petitioners to be represented by any coworker does not violate the principles of natural justice. It has been held by the **Hon'ble Apex Court in (2008)-1 SCC (L&S) titled as D.G Railway Protection Force and ors Vs. K.Raghuram Babu** as under:

“11. Following the above decision it has to be held that there is no vested or absolute right in any charge-sheeted employee to representation either through a counsel or through any other person unless the statute or rules/standing orders provide for such a right. Moreover, the right to representation through some one, even if granted by the rules, can be granted as a restricted or controlled right. Refusal to grant representation through an agent does not violate the principles of natural justice.”

22. Therefore, in view of the aforesaid judgment and also in view of the facts and circumstances of the present case, the non-representation of the petitioners by co-worker does not violate the principles of natural justice especially when they were duly represented by one Shri Shyam Singh in the enquiry proceedings.

23. The next contention raised by the learned counsel for the petitioner is that a joint enquiry was conducted against the all chargesheeted employees and before starting the joint enquiry the enquiry officer did not take the consent of all the chargesheeted workers due to which the petitioners' could not get the proper opportunity to defend their case. However, this contention of the learned counsel also cannot be accepted because the mere fact that a joint enquiry was conducted against the chargesheeted employees will not vitiate the domestic enquiry unless and until it is shown by the petitioners that a prejudice has been caused to them in conducting the joint enquiry against them. It has been held by the **Hon'ble Supreme Court in (1997) 3 SCC 371 titled as Balbir Chand Vs. Food Corporation of India Ltd and others** that a disciplinary enquiry

should not be equated as prosecution for an offence in a criminal court where the delinquents are arrayed as co-accused. The relevant portion of the aforesaid judgment is reproduced as under:

“5.....When more than one delinquent officer are involved, then with a view to avoid multiplicity of the proceedings, needless delay resulting from conducting the same and overlapping adducting of evidence or omission thereof and conflict of decision in that behalf, it is always necessary and salutary that common enquiry should be conducted against all the delinquent officers.”

.....Obviously, disciplinary enquiry should not be equated as a prosecution for an offence in a criminal court where the delinquents are arrayed as coaccused.....”

24. In the instant case, the learned counsel for the petitioners has failed to show that any prejudice was caused to the petitioners in conducting the joint enquiry against them. Therefore, in the absence of any prejudice having been caused to the petitioners, it cannot be said that the conducting of joint enquiry against them violated the principles of natural justice.

25. The learned counsel for the petitioners next contended that the petitioners were not allowed by the enquiry officer to lead evidence in defence as such no proper opportunity was given to them to get their case defended in a proper manner which resulted in denial of justice to them. It is a settled proposition that the procedural fairness is the essence of natural justice and procedural violation cannot lightly be brushed aside. From the perusal of the evidence on record it is clear that enquiry officer Shri M.R Dhiman is the practicing Advocate and therefore it can reasonably be presumed that he was well conversant with the intricacies and procedure of domestic enquiry. The perusal of the enquiry reports shows that after the conclusion of the evidence of the management, only one petitioner namely Shri Surender Singh appeared before the enquiry officer and in the enquiry report, it has been mentioned that Surender Singh stated that his statement be read in all other eleven cases of chargesheeted workers who were facing the present enquiry with him. In cross-examination as RW-2, the enquiry officer admitted that the enquiry was based upon the statement of Shri Surender Singh and his statement was read with respect to all the chrgesheeted workers. However, there is no material on record to suggest as to whether the other petitioners have authorized the petitioner Surender Singh to depose on their behalf. The enquiry officer has also admitted that no such statement by the other workers is on record. In my opinion, without any authorization by the other petitioners, the statement of petitioner Surender Singh could not have been read for all the other petitioners/chargesheeted workers who were facing the enquiry. Therefore, it has become clear that no opportunity was given to the petitioners to defend their case in a proper manner and to lead defence evidence which is clear cut violation of the principles of natural justice. Hence, all the aforesaid facts would show that a great prejudice has been caused to the petitioners by denial of the opportunity to them to lead their evidence in defence. Therefore, keeping view the aforesaid facts, I have no hesitation in holding that the enquiry conducted against the petitioners is unfair and violative of principles of natural justice and as such the enquiry reports against all the petitioners are set aside. The respondent could have led the evidence before this Court in order to prove the alleged misconduct against the petitioners. However, except for the bald statement of RW-1, no such evidence has been led by the respondent. RW-1 had only stated in his affidavit Ex. RW-1/A that the petitioners were assigned the duty of inspecting the empty as well as filled bottles during its on-line process but due to continues willful negligence and carelessness the petitioners failed to remove/reject dirty bottles and consequently dirty bottles getting filled up and finally entering in to the market. Except for this nothing has been stated by RW-1 regarding the alleged misconduct, therefore, no credence can be attached to the statement of RW-1. Hence, in view of the fact that the enquiry against the petitioners had been set aside and the respondent had failed to prove the alleged misconduct of the petitioners before this Court, it can safely be concluded that the termination of the petitioners w.e.f 7.3.2006 was unlawful.

26. The learned counsel for the petitioners next contended that while terminating the services of the petitioners, the respondent had not followed the mandatory provisions of the Act as at the time of termination of the services of the petitioner, demand notice dated 5.10.2005, Ex. PW 1/F, submitted by the petitioners and other workers regarding their demands was pending consideration before the Conciliation Officer/appropriate government and the respondent company has not followed the mandatory provisions of section 33-2(b) of the Act by taking the approval of termination of the petitioners as such the termination of their services is illegal and deserves to be declared as null & void. In support of his contention, learned counsel for the petitioners relied upon the statement of PW-12 Shri Devinder Kumar an official from the Labour Office, Solan who stated that the petitioners had raised a demand notice Ex. PW-1/F, which was pending in their office. In cross-examination, he stated that on the demand notice, the labour inspector, Baddi was directed to take action and the report of labour inspector had been received on 6.1.2006, the copy of which was forwarded to Labour Officer, Solan and Labour Commissioner, Shimla on 24.1.2006. At this stage, it would be relevant to reproduce section 33-2 (a & b) of the Act which reads as under:

“(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 2*[or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman].--

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding;

or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer”.

27. Thus, from the perusal of the aforesaid provision of section 33-2(b) of the Act, it is clear that the same is mandatory in nature. From the perusal of the material on record, it is clear that the demand notice dated 5.10.2005, Ex. PW-1/F was pending consideration before the Conciliation Officer Baddi at the time of termination of the services of the petitioners on 6.3.2006. In para 12 of the reply, the respondent had also admitted that they had filed an application under sub section 2 of section 33 of the Act before the Conciliation Officer, Baddi and in the letters of termination Ex. PW-1/D, Ex. PW-2/D, Ex. PW-3/D, Ex. PW-4/D, Ex. PW-5/D, Ex. PW-6/D and PW-10/D, also it has been admitted by the respondent that since a dispute is pending before the Conciliation Officer, Baddi, HP they have made an application for approval of the termination in order to comply with the provisions of section 33-2 of the Act. However, except for the statement of RW-1, there is no evidence on record led by the respondent to show that any such application has been filed under section 33-2(b) of the Act for seeking approval of the termination of the services of the petitioners. In fact, RW-1 had tendered in evidence the copies of documents Ex. R-1 to Ex. R-22 including the copies of aforesaid applications without proving the same in accordance with law. Even, the person who had signed the aforesaid applications has not stepped into the witness box. It was incumbent upon the respondent to produce/summon the record from the office of Conciliation Officer, Baddi in order to prove that the application for seeking the approval of the termination of the petitioners was filed. However, no such record from the office of Conciliation Officer, Baddi has been produced/summoned by the respondent. As per the case of the respondent,

the applications for approval had been filed on 6.3.2006. However, it has not been proved by the respondent as to what action had been taken thereafter by the Conciliation Office Baddi, if they had filed any such applications. Hence, in the absence of any cogent and satisfactory evidence on record, it cannot be said that any such application has been filed under section 33-2(b) of the Act for seeking approval of the termination of the petitioners and thereafter any action had been taken by the Conciliation Officer, Baddi on such applications. Therefore, it has become clear that on the day i.e 6.3.2006, on which date the orders for the dismissal of the services of the petitioners were passed by the respondent, the demand notice was pending before the Conciliation Officer as such he was to examine the issue and make a reference. However, the respondent company did not take the approval to dismiss the services of the petitioners as provided under section 33-2(b) of the Act. The **Hon'ble Apex Court in case reported in AIR 2002 SC 643 in case titled as Jaipur Zila Sehkari Bhumi Vikas bank Ltd. Vs. Ram Gopal Sharma** has held that:-

“It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of Section 33(2)(b) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Section 33(2)(b) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them are already strained. An employer cannot be permitted to use the provision of Section 33(2)(b) to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void or inoperative, the employer may with impunity discharge or dismiss a workman.”

28. **In a case reported in 2007 SC 3071 titled as united bank of India Vs. Siharth Chokborty** it has been held by the Hon'ble Supreme Court that the provisions of section 33 2 (b) are mandatory and non-compliance thereof is sufficient to refuse approval and the worker is entitled to reinstatement.

29. Therefore, in view of the aforesaid decisions of the Hon'ble Apex Court, it is clear that once the conciliation proceedings were pending before the Conciliation Officer, the respondent company was not competent to dismiss the petitioners from service without seeking approval as provided under section 33-2(b) of the Act. The non-making of an application under section 33-2(b) of the Act for seeking approval of the termination of the services of the petitioners is a clear cut case of the contravention of the proviso of section 33-2(b) of the Act. Thus, on this ground also the order terminating the services of the petitioners is bad in law.

30. Therefore, in view of my aforesaid discussion, as the petitioners have succeeded in proving that their termination of the services by the respondent is unlawful, hence, the petitioners are held entitled to reinstatement in service with seniority and continuity.

31. Now, the question which arises for consideration, before this Court is as to whether the petitioners are entitled to full back wages as contended by the learned counsel for the petitioners. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is setaside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an

employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

32. Moreover, the petitioners were under an obligation to prove by leading cogent evidence that they were not gainfully employed after the termination of their services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that:

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

33. In the present case, the petitioners have failed to discharge their burden by placing any material on record that they were not gainfully employed after their termination/disengagement. Rather, petitioner Shri Pritam Chand as PW-11, admitted in crossexamination that after the termination of his services by the respondent, he was working at Balakrupi, District Kangra and all the other petitioners whose services were terminated were also employed. Therefore, since all the petitioners are gainfully employed after their termination, no back-wages can be granted to them. Thus, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioners are not entitled to any back-wages. Accordingly, this issue is decided in favour of the petitioners and against the respondent.

Issue No.2.

34. In view of my findings on issue no. 1 above, it cannot be said that the termination of the services of the petitioners does not amount to retrenchment as defined under section 2 (oo) of the Act. Therefore, this issue is decided in favour of the petitioners and against the respondent.

Issue No.3.

35. In support of this issue, no evidence has been led by the respondent which could go to show as to how the present reference is not maintainable. Accordingly, this issue is decided in favour of the petitioners and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioners is partly allowed and the petitioners are ordered to be reinstated in service forthwith with seniority and continuity. However, the petitioners are not entitled to back wages and as such the reference is ordered to be answered in favour of the petitioners and against the respondent. File, after completion, be consigned to records.

Announced in the open Court today on this 20th day of May, 2016.

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref. No. 38 of 2013.

Instituted on 24.6.2013.

Decided on 5.5.2016.

Mohinder Singh S/o Shri Prehlad R/o Village Chukra, P.O Rajera, Tehsil & District Chamba, HP. . *Petitioner.*

VS.

The conservator of Forest (Planning & Project) Circle Talland Shimla-2, HP. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R.K Chauva, Advocate.

For respondent : Shri H.N Kashyap, ADA.

AWARD

The following reference has been sent by the appropriate government to this Court for adjudication:

“Whether termination of the services of Shri Mohinder Singh S/o Shri Prehlad R/o Village Chukra, P.O Rajera Tehsil & District Chamba, HP by the Conservator of Forests (Planning & Project) Circle Talland, Shimla HP w.e.f. 1.4.2001 as alleged by the workman without following the provisions of the section 25-G and 25-H of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. Briefly, the case of the petitioner is that he was employed as daily wager by the respondent during the month of December, 1996 and remained as such till March, 2001 when he was removed from job without compliance of statutory and mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). It is further stated that the petitioner had worked with the respondent for more than 240 days during the preceding calendar year and even his services had orally been terminated without complying any procedure and the persons junior to him namely Jai Krishan, Mohinder Singh, Dhuni Chand, Ishwar Kumar, Jeet Ram, Pinku Ram, Surya Parkash, Goving Kumar, Hem Raj, Amar Singh and Ginder Singh had been retained/engaged in the year, 2002 and all benefits have been given to them. It is also stated that during the entire service tenure, the petitioner was never served with any explanation call, show cause notice and warning letter by the respondent and even no domestic enquiry was conducted against the petitioner before terminating his services. The respondent had not complied with the mandatory provisions of section 25-N and 25-F of the Act. The petitioner is unemployed since the date of his illegal retrenchment and that he had not abandoned his job at his own. Against this back-ground a prayer has been made for his re-instatement along-with all consequential service benefits.

3. By filing reply, respondent has contested the claim of the petitioner, wherein preliminary objections had been taken that the petitioner was engaged as daily wager during July, 1996 in DFID (Department for International Development) Project aided by U.K and worked as such till March, 2001 as the Project was completed on 31.3.2001 and the respondent had served a notice upon the petitioner and five others regarding their retrenchment due to closure of the Project. The petitioner approached the Labour Commissioner for adjudication of his reference which was declined by the Labour Commissioner and thereafter the petitioner filed CWP No. 2995/2012 and before terminating the service of the petitioner, proper notice had been given to him. On merits, it is admitted that the petitioner had worked with minimum of 240 days in preceding twelve months upto March, 2001 and completed 1533 days as per year wise detail given as under:

Year	1996	1997	1998	1999	2000	2001
Mandays	175	364	251	296	366	81

It is further asserted that before the DFID Project came to an end w.e.f. 31.3.2001, the petitioner and five other workers were served with a notice of retrenchment by Chief Conservator of Forest (Project) vide letter dated 1.3.2001 and the services of S/Shri Jai Kishan, Mohinder Singh, Dhuni Chand Ishwar Kumar etc., who were engaged in a different project named as NOARD, were too disengaged on different dates with the closure of the aforesaid project. The services of the aforesaid persons have been regularized by virtue of the orders passed by the Labour Court/ Administrative Tribunal assigning seniority and continuity in favour of these daily wagers. The services of the petitioner have been lawfully and legally terminated by adhering to the provisions of the Act. It is also asserted that the petitioner is not entitled for the protection of section 25-G and 25-H of the Act as he was engaged in a project named as DFID which was culminated on 31.3.2001 and the petitioner and five others were served notice on 1.3.2001 stating therein that their services would automatically come to an end with the closure of the Project. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner has reiterated his allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 15.9.2014.

1. Whether the termination of services of the petitioner w.e.f. 1.4.2001 are illegal and unjustified as alleged? . .OPP.
2. If issue no.1 is proved in affirmative to what service benefits, the petitioner is entitled to? . .OPP.
3. Whether the claim put forth by the petitioner is not maintainable as alleged? . .OPR.
4. Relief.

6. I have heard the learned Counsel for the petitioner and learned ADA for respondent and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1 No.

Issue no.2 Becomes redundant.

Issue no.3 No.

Relief. Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings.

Issue no. 1

8. Ld. Counsel for petitioner contended that the petitioner had worked as daily wager with the respondent w.e.f. December, 1996 till March, 2001 continuously and his services have been terminated orally without following the mandatory provisions of the Act. He further contended that the respondent had engaged other daily wagers in the department and retained juniors to the petitioner which is clear cut violation of the provisions of section 25-G & H of the Act and also against the principles of "last come first go" and since, the services of the petitioner were terminated in utter violation of the provisions of the Act, he deserves to be reinstated along with all the consequential benefits including back wages.

9. On the contrary, learned ADA for respondent contended that the services of the petitioner had been engaged on daily wages basis under the DFID project aided by U.K and on the completion of the said Project, his services were terminated by serving a notice upon him and five others regarding their retrenchment due to closure of the project. Hence, the petitioner is not entitled to any relief from the respondent.

10. To prove his case, the petitioner examined five PWs including himself. PW-1 Shri Moti Lal, Superintendent has brought the service record of Shri Hem Raj S/o Shri Jagat Ram, who is posted as peon in the office of Conservator of Forests Chamba and as per the mandays chart Ex. PW-1/A, Shri Hem Raj was engaged by the department in the year, 1993 as daily wager and he (Hem Raj) was also engaged in DFID project in the year, 1998. The petitioner was engaged as daily wager in the same project (DFID) in July, 1996. The DFID project was closed on 31.3.2001 and all the workers of the aforesaid project were terminated by giving them notices. Mohinder Singh & five other workers were never reengaged by the department and the services of Hem Raj were never terminated and he was regularized in the year, 2007. In cross-examination, he admitted that no notice was issued to Hem Raj by the department because he was already serving with the department and his services were never disengaged by the department. He further admitted that Mohinder Singh had never made any representation to the department for his re-engagement from the year, 2001 till the year, 2009. He also admitted that DFID project was never revived after the year, 2001 and that the department had assured the petitioner and other workers to re-engage them on the revival of the project.

11. PW-2 Ms. Prabha, Forest Guard has stated that Ex. PW-2/A is the letter issued by DFO Rohru and as per the record Jawhar Singh S/o Shri Mangal Jew was appointed on 1.10.1999 as a daily wager and regularized in December, 2015. As per service book of Shri Jawhar Singh, he was regularized on 24.12.2015. In cross-examination, she admitted that Jawahar Singh was permanent employee with the department and she expressed her ignorance that the petitioner ever remained as a worker of the department.

12. PW-3 Shri Atma Ram, Deputy Ranger has stated that as per record, Shri Chajju Ram S/o Shri Dhantu Ram was initially engaged as daily wager in the year, 2000 and now he is regular employee with the department w.e.f. December, 2015 and Smt. Jayanti Devi W/o Liaq Ram was

initially engaged in the year, 2001 as daily wager and now she has also been regularized in the year, 2015 and Ex. PW-3/B is the copy of mandays chart of both employees. In cross-examination, he admitted that Chajju Ram and Jayanti Devi have been working with the department continuously since the years, 2000 and 2001 respectively and they have completed more than 240 days in each calendar year and the petitioner never remained as a worker under DFO Chopal.

13. PW-4 Shri Bhuvnesh Gupta, Deputy Ranger has stated that as per the record Kishori Lal S/o Shri Jalpu Ram was initially engaged as a daily wager in the year 2000 and now he is regular employee with the department w.e.f. December, 2015. In cross-examination, he admitted that Kishori Lal remained as a permanent worker with the department and he had never worked under any project. The petitioner never worked under DFO Shimla (Urban).

14. The petitioner appeared as witness as PW-5 and tendered his affidavit Ex. PW-5/A in evidence wherein he supported almost all the averments as stated in the claim petition. He also tendered in evidence certified copy of O.A No. 857/2001 which is Ex. PW-5/B and COPC no. 755/2012 which is Ex. PW-5/C. In cross-examination, he denied that he had worked under DFID project but admitted that he had worked till March, 2001 and thereafter he had never worked with the department. He denied that the work under the project was for a specific period on con-terminus basis. He admitted that before the closure of the project, a notice was issued to him regarding termination of his services. He admitted his signatures on notice Ex. RX in red circle. He further admitted that four other workers also worked under DFID Project and they have not filed any case. He denied that he had not visited the department for his re-engagement. He could not state that S/Shri Jai Kishan, Dhuni Chand, Mohinder Singh, Ishwar Kumar, Jeet Ram, Pinku Ram, Surya Parkash, Govind Kumar, Hem Raj, Amar Singh and Ginder Singh were working under the different projects continuously.

15. On the contrary, respondent examined one Smt. Anita Vashist, Registrar Establishment, who tendered in evidence her affidavit Ex. RW-1/A. She also tendered in evidence, the authority letter Ex. RW-1/B and office order dated 2.4.2013, Ex. RW-1/C. In cross examination, she admitted that the petitioner was working in the forest department but volunteered that he was working under DFID project. She admitted that office order Ex. PY has been issued by Principal Chief Conservator of Forests Shimla as per which Shri Hem Raj, daily wager was on Vidhan Sabha duty. She admitted that Shri Hem Raj was regularized in the department. She denied that Mohinder Singh was also daily wager in the department and he was removed without giving any notice. She admitted that Mohinder Singh had completed 240 days in one calendar year as per Ex. RW-1/C. She denied that the petitioner was illegally terminated.

16. I have considered the respective contentions of the learned counsel for petitioner and learned ADA for the respondent and also scrutinized the record of the case minutely.

17. After the closer scrutiny of the record of the case, it has become clear that the petitioner was engaged as daily wager by the respondent under DFID Project during July, 1996 and he worked as such till the year, 2001 as is evident from the office order dated 2.4.2013 Ex. RW 1/C. From the perusal of office order dated 2.4.2013, Ex. RW-1/C, it is clear that the petitioner had worked for 175 days in the year, 1996, 364 days in the year, 1997, 251 days in 1998, 296 days in 1999, 366 days in 2000 and 81 days in 2001. However, the case of the respondent is that the petitioner was engaged for specific work under DFID project whose services came to an end with the completion of the project and even before terminating his services, a notice Ex. RX was also served to the petitioner and other workers who were working in the same project. The petitioner as PW-5 has admitted in cross-examination that before the closure of the project a notice was issued to them regarding termination of their services. It has been held by the Hon'ble Supreme Court in *(2006) 6 SCC 221 in case titled as Reserve Bank Of India Vs. Gopi Nath Sharma & Another* that

workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, had no right to the post. The relevant portion of the aforesaid judgment is reproduced as under:

“22. In our view, respondent No.1 was not appointed to any regular post but was only engaged on the basis of the need of the work on day to-day basis and he has no right to the post and that his dis-engagement cannot be treated as arbitrary.....”

Apart from it, it was further held in **2006 LLR 68 SC titled as Punjab State Electricity Board V. Darbara Singh** and in **2006 LLR 1009 SC. titled as Municipal Council Samrala V. Surhwinder Kaur** that when *material on record established that engagement of workman was for specific period as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months.*

18. Thus, having regard to the above cited rulings and entire evidence on record, it can safely be concluded that the petitioner was engaged for specific period under the project and on the completion of the project/work, his services came to an end and as such it does not lie in the mouth of petitioner to claim his reengagement on the basis of his previous work with the respondent and even if it is proved on record that the petitioner had completed 240 working days in a calendar year preceding his termination even then he is not entitled to be reengaged in service by giving him the protection under section 25-F of the Industrial Disputes Act, 1947 as it is now well settled principle of law that the engagement made for specific period comes to an end by efflux of time and the person on such post can have no right to continue on the post and it does not matter even if he had worked for more than 240 working days in any 12 calendar months preceding his termination.

19. Now, advertizing to the other aspect of the case, it is also the case of the petitioner that he was terminated by the respondent in violation of the provisions of sections 25-G and H of the Act. The petitioner as PW-1 has stated in his affidavit Ex. PW-5/A that junior/fresh persons namely Jai Kishan, Mohinder Singh, Dhuni Chand, Mohinder Singh, Ishwar Kumar, Jeet Ram, Pinku Ram, Surya Parkash, Govind Kumar, Hem Raj, Amar Singh and Ginder Singh were retained/engaged in the year, 2002 and thereafter, they have been given regularization etc., without complying with the provisions of sections 25-G & H of the Act. However, the petitioner has failed to prove on record that the aforesaid persons have been engaged in the same project in which he was working and even there is no record which could go to show that the persons working in DFID project with the petitioner were re-engaged by the department. PW-1, has stated that Hemraj was engaged by the department in the year, 1993 as daily wager whereas Mahinder Singh was engaged in the DFID project in the year, 1996. PW-2, stated that Jawhar Singh was appointed as a daily wager and was the permanent employee with the department. PW- 3 stated that Chajju Ram and Jayvanti Devi were also engaged as daily wagers by the department. PW-4 has stated that Kishori Lal was also engaged as a daily wager by the department and he had never worked under any project. Hence, there is no evidence on record to suggest that fresh persons have been engaged and the persons junior to the petitioner have been retained who were working in the same project in which the petitioner was working. The perusal of the evidence on record shows that the persons who have been regularized by the department have been engaged as daily wagers by the department and they have never worked under DFID project. The petitioner was engaged in DFID project which came to an end on 31.3.2001 and after the closure of the said project, it was never revived as such no fresh persons were engaged and no juniors to the petitioner were retained. Therefore, in the absence of any evidence on record, it cannot be said that the respondent had engaged fresh workers and retained junior persons to the petitioner and failed to comply with the provisions of sections 25-G & H of the Act while terminating the services of the petitioner. Hence, I have no hesitation in coming to the conclusion that the termination of services of petitioner w.e.f. 1.4.2001 by

respondent on the completion of the project/work is legal and justified and does not call for any interference by this court. Accordingly this issue is decided in favour of respondent and against the petitioner.

Issue no.2

20. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Issue no.3.

21. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 5th day of May, 2016.

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

19.5.2016.

Present: None for the petitioner.
Shri H.N Kashyap, ADA for respondents.

Case called repeatedly but neither the petitioner nor his counsel appeared before this Court which clearly shows that the petitioner is not interested to pursue his case. Since, none appeared on behalf of the petitioner, hence, this Court is left with no other alternative but to decide the reference on the basis of material whatsoever available on file. The reference sent by the appropriate government for adjudication is as under:

“Whether termination of Shri Rupinder Singh S/o late Shri DayaNand R/o Village Manju, P.O Baldeyan, Tehsil & District Shimla, HP by the Executive Engineer, I& PH Division no.2 Tehsil & District Shimla w.e.f. 30.11.1998 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping inview the delay of more than 10 years in raising the industrial dispute what amount of back-wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer”

For the failure of the petitioner to appear before this Court and to place on record any material/evidence, it cannot be held that his services were illegally terminated by the respondent w.e.f. 30.11.1998 without complying with the provisions of the Act. Hence, the reference is answered against the petitioner and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
19.5.2016.

(SushilKukreja)
Presiding Judge,
Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P.)**

Ref. No. 27 of 2010.

Instituted on. 12.4.2010.

Decided on 10.5.2016.

Mehar Singh S/o Shri Hiru Ram R/o Village Lehtana, P.O Shalaghat, Tehsil Arki, District Solan, HP. .Petitioner.

Vs.

M/s Ind Swift Ltd., Plot no. 17-B, Sector-2, Parwanoo, Tehsil Kasauli, District Solan, HP, through its Managing Director and General Manager. .Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Rajinder Thakur, Advocate.

For respondent : Already ex-parte.

AWARD

The following reference has been sent by the appropriate government for adjudication:

“Whether the termination of the services of Shri Mehar Singh S/o Shri Hiru Ram exsecurity workman by the management M/s Ind Swift Ltd., Plot no. 17B sector-2, Parwanoo, District Solan, HP w.e.f. 15.10.2008 without complying the provisions of the Industrial Disputes Act, 1947 and retaining junior workmen, as alleged by the workman is proper and justified? If not, what relief including reinstatement, back-wages, seniority the above worker is entitled to?”

2. Briefly, the case of the petitioner is that he was engaged as Guard by the respondent on 11.5.2005 and thereafter in the month of October, 2007 he was promoted as Security Supervisor at the monthly wages of ₹ 4800/- . The petitioner was discharging his duties honestly, diligently and according to the best of his abilities and there had been no complaint against him but on

14.10.2008, the petitioner was telephonically informed by S/Shri Sultan Patel, General Manager and Chaman Jariyal, Manager HRD not to come on duty and then on 15.10.2008, a security guard telephonically intimated the petitioner to attend his duty and when the petitioner came to attend the duty on the same day, Shri Chaman Jariyal told him "Chutti Karo" and thereafter the petitioner went to the office of Labour Inspector, who told to Mr. Chaman Jariyal to allow the petitioner to join his duties but the officials of respondent had not allowed to join his (petitioner) duties. It is further stated that there were more than 300 workers deployed by the respondent, hence, the respondent was duty bound to comply with the provisions of sections 25-F, 25-G & H and 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as Act but the services of the petitioner had been terminated orally without complying with the provisions of the Act despite the fact that junior to him namely Prakesh Chand etc. have been retained. It is further stated that the petitioner is ex-serviceman, who served with the Indian Army w.e.f. 25.2.1978 till 30.6.2000, when he was discharged from Assam Rifles at Shillong and joined the respondent w.e.f. 11.5.2005. It is also stated that the respondent had established their two factories at plot no. 17 & 23-B and third factory at Baddi and in case the respondent had any inhabituation to allow the petitioner to continue at the present place of posting, he could have been shifted in another factory at Parwanoo especially when the junior persons have been allowed to be retained. The respondent management had failed to give the benefits of ESI, PF, over time charges etc., to the petitioner and even the respondent had withheld the overtime of 10 days for the month of September, 2008, salary @ ₹ 5350/- per month from October, 2008 onward and increments, house rent allowance @ ₹ 1,000/- per month from October, 2008 till date to which the petitioner was entitled. Further, the following other amounts have been withheld by the respondent management:

a.	Wages @ ₹ 240 per day for 13 Sundays, one National Holiday and six leaves = 20 days,	₹ 4800/-
b.	Bonus for the year, 2008	₹ 2500/-
c.	Medical bills totaling till date	₹ 55000/-
d.	Refreshment @ ₹ 5 per day from October, 2008 till date	
e.	Litigation costs including bus fare from Shalaghat to Parwanoo	₹ 10000/-
f.	Dress such as Jersey & Jacket from October, 2008 to December, 2008 which comes to	₹ 10000/-
g.	Uniform such as pent, shirt, shoes, socks, cap, belt etc., @ ₹ 1200/- for two years	₹ 2400/-
h.	Damages/Compensation on account of harassment, humiliation and mental torture.	₹ 50000/-

It is further stated that the respondent is liable to pay the aforesaid dues with interest @ 18% per annum to the petitioner. Against this back-drop a prayer has been made for his re-engagement by quashing order dated 14/15.10.2008, along-with back-wages and other consequential service benefits.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability, that the petitioner does not fall within the definition of section 2(s) of the Act, jurisdiction and willful absenteeism. On merits, it has been

asserted that since the petitioner was initially engaged on contractual basis, hence, he is not covered under the definition of the term “workman”. It is further asserted that due to the sudden absence of the petitioner from his duties without assigning any reasons or pre-information, the company incurred huge losses, hence, alternative arrangements had to be made to make sure that the security supervisory service are not adversely affected for which the company reserves its full right to claim from the petitioner. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 28.9.2010.

1. Whether the services of the petitioner w.e.f. 15.10.2008 have been terminated in an illegal and improper manner in contravention of the provisions of the Industrial Disputes Act, 1947 as alleged? . .OPP.
2. If issue no.1 is proved to what service benefits, the petitioner is entitled to? . .OPP.
3. Whether this Court has no jurisdiction as alleged? . .OPR.
4. Relief.

5. Besides having heard the learned counsel for the petitioner, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1 Yes.

Issue no.2 Entitled to reinstatement with seniority and continuity but without back-wages.

Issue no.3 No.

Relief. Reference answered in favour of petitioner and against the respondent per operative part of award.

Reasons for findings.

Issues no.1.

7. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act. It was further urged that juniors to the petitioner are still working with the respondent in violation of the principles of “last come first go” and even after the termination of the petitioner, the respondent had engaged fresh hands in violation of the provisions of section 25-H of the Act.

8. The petitioner stepped into the witness box as PW-1 and tendered his affidavit Ex. PW-1/A in examination-in-chief wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence documents mark X to mark X-5. In cross-examination, he admitted that he was working in the capacity of security supervisor with the respondent company. He denied that he joined the services with the respondent w.e.f. 1.8.2005. He admitted

that he was getting ₹ 5350/- per month as salary. He denied that he was appointed on contract basis. He admitted that he was getting ₹8000/- per month as pension as he retired from Asam Rifles. He admitted that he had not turned up after 13.10.2008 for his service. He denied that he intentionally absented himself from duty without any intimation.

9. Before, I proceed further, it is important to mention here that the petitioner closed his evidence on 16.12.2015 and thereafter several opportunities have been afforded to the respondent in order to lead evidence but the respondent failed to lead any evidence and when on 22.4.2016, none appeared on behalf of the respondent, it was proceeded against ex-parte.

10. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that being ex-serviceman, the petitioner was engaged as security supervisor by the respondent. The stand which has been taken by the respondent in its reply is to the effect that the petitioner was working as security supervisor in the supervisory capacity and as such he does not fall under the category of 'workman' as prescribed in section 2 (s) of the Act. Now, this Court is required to ascertain as to whether the petitioner falls within the category of workman or not as per section 2 (s) of the Act. At this juncture, it would be relevant to re-produce section 2 (s) of the Act, which reads as under:

"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

11. It is a settled provision of law that in determining as to whether a person is a workman or not, the Court has to principally see the main or substantial work for which he was employed. Neither the designation nor any incidental work done by him will get him out-side the preview of the Act. The Hon'ble Supreme Court in **(1994) 5 S.C.C 737, titled as H.R. Adyanthaya and others Vs. Sandoz (India) Ltd., and another** has held that for an employee to be covered by the definition of workman he must be employed in any industry to do any manual, un-skilled, skilled, technical, operational, clerical or supervisory work. If he falls within these categories, it has then to be seen whether he comes within any of the four excluded categories mentioned in section 2 (s) of the Act. The relevant portion of the aforesaid judgment reads as under:

24..... Hence, the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions of the definition. We reiterate the said interpretation."

12. In the instant case, from the perusal of evidence on record, it has become clear that initially the petitioner was engaged as security guard and thereafter in October, 2007, he was promoted as security supervisor and was getting ₹ 5350/- per month as wages. Therefore, it was for the respondent to prove that the petitioner was employed in a managerial or administrative/supervisory capacity or by the reason of power vested under him, the functions of the petitioner were mainly of a supervisory nature. However, no evidence has been produced on record by the respondent that the petitioner was working in the supervisory capacity and his duty was mainly of supervisory nature. Therefore, in the absence of any evidence on record, it cannot be said that the petitioner was not a 'workman'.

13. Another plea which has been taken by the respondent in its reply is that the petitioner had willfully absented himself from duty since 14.10.2008 without any intimation and as such he had voluntarily abandoned his job. Abandonment of service has not been defined in the Act. In a case titled as **G.T Lad and others Vs. Chemicals and Fibers India Ltd. reported in AIR 1979 SC 582**, the Hon'ble Supreme Court has held that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. **The relevant portion of the aforesaid judgment is reproduced as under:**

"From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same.

In Buckingham Co. v. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case."

It is also well settled that once, it is admitted that the workman had been in service of the management, the burden of proving that he himself abandoned the job lies on the management as has been held by the Hon'ble Supreme Court in **M/s Nicks (India) Tools Vs. Ram Surat reported in 2004 (103) FLR 102**. Thus, voluntarily abandonment of job can only be proved by the respondent/management by bringing on record evidence of absence of employee along-with his intention not to join back. However, in the present case, there is no iota of evidence on record which could go to show that the petitioner had left the job on his own as no material regarding abandonment of the job by the petitioner is placed on record by the respondent. Therefore, in the absence of any record, inference cannot be drawn that the petitioner had voluntarily abandoned the job on his own since 14.10.2008.

14. The learned counsel for the petitioner contended that since the petitioner has completed 240 working days in twelve calendar months preceding his termination, hence there is violation of section 25-F of the Act. However, when regard is given to the evidence on record, there is no material on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others**, the Hon'ble Supreme Court has held as under:

"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."

15. In *AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh*, the Hon'ble Supreme Court has held that:—

Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

16. The learned counsel for the petitioner next contended that number of junior persons i.e Prakash Chand etc. have been retained and some other security supervisors have been engaged by the respondent without giving an opportunity to the petitioner for re-employment as such the respondent had violated the provisions of sections 25-G & 25-H of the Act. It has been held by the Hon'ble Supreme Court in series of judgments that it is not necessary for the workman to have completed 240 days during preceding twelve calendar months for taking the benefits of sections 25 G and 25-H of the Act. In a decision titled as **Ajaypal Singh Vs. Haryana Warehousing Corporation (2015) 6 SCC 321**, it has been held by the Hon'ble Apex Court that for attracting section 25-G and 25-H, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding his termination. It has further been held that the retrenched workman shall be given preference over other workers if the employer proposes to employ other person. The relevant portion of the aforesaid judgment reads as under:

“11. For attracting the provisions of section 25-G of the Industrial Disputes Act, 1947, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of “last come first go” without any tangible reason.

12. Section 25-H is couched in wide language and is capable of application to all “retrenched workmen” and not merely those covered under Section 25-F of the Act.

13.

14. In case if an employer proposes to employ any person, it is mandatory on the part of the employer to give an opportunity to the retrenched workmen who offer themselves for re employment and such workmen who offer themselves for re-employment shall have preference over other persons. The provision of section 25-H is in conformity with Articles 14 & 16 of the Constitution of India.”

17. In the instant case, except for the bald statement of the petitioner, no other evidence has been led by him to establish that junior persons have been retained by the respondent.

Therefore, in the absence of any evidence on record, it cannot be said that persons junior to the petitioner are still working with the respondent in violation of the provisions of section 25-G of the Act. However, the respondent has admitted in its reply that due to the sudden absence of the petitioner from his duties without assigning any reasons or pre-information, the company incurred huge losses, hence, alternative arrangements had to be made to make sure that the security supervisory services are not adversely affected. Therefore, from the aforesaid admission, it is clear that after the termination of the services of the petitioner, the respondent had appointed fresh security supervisors without giving any opportunity to the petitioner for re-employment in violation of section 25-H of the Act.

18. Thus, having regard to the entire evidence on record, I have no hesitation in coming to the conclusion that after the termination of the services of the petitioner, fresh security supervisors have been engaged by the respondent and as such the termination of the services of the petitioner by the respondent without complying with the provisions of section 25-H of the Act is illegal and unjustified. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue no. 2.

19. Since, I have held under issue no.1 above that the termination of services of the petitioner by the respondent without following the provisions of section 25-H of the Act is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

20. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

21. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

22. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue No. 3.

23. In support of this issue, no evidence has been led by the respondent in order to show that as to how this Court has no jurisdiction to try this case especially when a reference has been made by the appropriate government to this Court for adjudication. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However, the petitioner is not entitled to back wages and as such the reference is ordered to be answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 10th Day of May, 2016.

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

वित्त (विनियम) विभाग

अधिसूचना

शिमला-2, 28 जून, 2016

संख्या: फिन(सी)ए(3)-1/2014.—हिमाचल प्रदेश के राज्यपाल, भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश राज्य में लागू सैन्ट्रल सिविल सर्विसिज (लीव) रूल्ज, 1972 का और संशोधन करने के लिए निम्नलिखित नियम बनाते हैं, अर्थात् :—

संक्षिप्त नाम और प्रारम्भ.—(1) इन नियमों का संक्षिप्त नाम सैन्ट्रल सिविल सर्विसिज (लीव) हिमाचल प्रदेश (प्रथम संशोधन) नियम, 2016 है।

(2) ये नियम राजपत्र, हिमाचल प्रदेश में प्रकाशन की तारीख से प्रवृत्त होंगे।

रूल 50 का संशोधन.—हिमाचल प्रदेश राज्य में लागू सैन्ट्रल सिविल सर्विसिज (लीव) रूल्ज, 1972, के रूल 50 के सब-रूल (5) के विद्यमान क्लॉज (ii) (iii) के स्थान पर निम्नलिखित क्लॉज रखे जाएंगे, अर्थात् :—

“(ii) who has not crossed the age of 50 years on the date of submitting the application for such study leave; and

(iii) who executes a Bond as laid down in rule 53(4) undertaking to serve the Government for a period of five years after the expiry of the leave.”

आदेश द्वारा,
डॉ श्रीकान्त बाल्दी,
अतिरिक्त मुख्य सचिव (वित्त)।

[Authoritative English text of this Department Notification No. Fin (C) A(3)-1/2014 dated 28-06-2016 as required under Clause (3) of Article-348 of the Constitution of India.]

FINANCE (REGULATION) DEPARTMENT

NOTIFICATION

Shimla-2, the 28th June, 2016

No. Fin (C) A(3)-1/2014.—In exercise of the powers conferred by proviso to Article-309 of the Constitution of India, the Governor, Himachal Pradesh, is pleased to make the following rules further to amend the Central Civil Services (Leave) Rules, 1972, in their application to the State of Himachal Pradesh, namely :—

Short title and commencement.—(1) These rules may be called the Central Civil Services (Leave) Himachal Pradesh (First Amendment) Rules, 2016.

(2) They shall come into force from the date of publication in the Rajpatra, Himachal Pradesh.

Amendment of rule 50.— In rule 50 of the Central Civil Services (Leave) Rules, 1972, in their application to the State of Himachal Pradesh, in sub- rule (5) for the existing clauses (ii) & (iii), the following clauses shall be substituted, namely :—

- “(ii) who has not crossed the age of 50 years on the date of submitting the application for such study leave; and
- (iii) who executes a Bond as laid down in rule 53(4) undertaking to serve the Government for a period of five years after the expiry of the leave.”

By order,
DR. SHRIKANT BALDI,
Additional Chief Secretary(Finance).

In the Court of Ms. Kritika Kulhari, IAS, Marriage Officer-cum-Sub Divisional Magistrate, Hamirpur

In the matter of :

1. Suresh Kumar aged 43 years s/o Shri Suhru Ram, r/o VPO Bohni Panjwin, Tehsil & District Hamirpur (HP).
2. Bandna Kumari aged 27 years d/o Shri Dev Raj, r/o VPO Utpur, Tehsil Tauni Devi, District Hamirpur (HP) . . . *Applicants.*

Versus

General Public

Subject:—Notice of the Intended Marriage.

Suresh Kumar and Bandna Kumari have filed an application U/S 5 of Special Marriage Act, 1954 alongwith affidavits in the court of undersigned in which they stated they intend to solemnized marriage within three calendar months.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 29-07-2016. The objection received after 29-07-2016 will not be entertained and marriage will be registered accordingly.

Issued today on 25-06-2016 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub Divisional Magistrate,
Hamirpur.*

**In the Court of Ms. Kritika Kulhari, IAS, Marriage Officer-cum-Sub Divisional Magistrate,
Hamirpur (Himachal Pradesh)**

In the matter of :

1. Anil Pathania aged 36 years s/o Shri Shakti Chand, r/o Village Dhalot, PO Bohani, Tehsil & District Hamirpur.
2. Anupma aged 26 years d/o Shri Kulwant Singh, r/o Village Salot, PO Sarahkar, Tehsil & District Hamirpur

. . . *Applicants.*

Versus

General Public

Subject:—Notice of the Intended Marriage.

Anil Pathania and Anupma have filed an application U/S 5 of Special Marriage Act, 1954 alongwith affidavit and other documents in the court of undersigned in which they stated that they intend to solemnized marriage within three calendar months.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 27-07-2016. The objection received after 27-07-2016 will not be entertained and marriage will be registered accordingly.

Issued today on 25-06-2016 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub Divisional Magistrate,
Hamirpur (H.P.).*

**In the Court of Ms. Kritika Kulhari, IAS, Marriage Officer-cum-Sub Divisional Magistrate,
Hamirpur, Himachal Pradesh**

In the matter of :

1. Vinod aged 25 years s/o Shri Parkash Chand, r/o Ward No. 3, Village Uparla Manjah, Tehsil Palampur, District Kangra.
2. Shallu Kumari aged 18 years d/o Shri Ramesh Kumar, r/o Village & PO Kharoti, Tehsil Salooni, District Chamba (H.P.) . . . *Applicants.*

Versus

General Public

Subject:—Notice of the Intended Marriage.

Vinod and Shallu Kumari have filed an application u/s 5 of Special Marriage Act, 1954 alongwith affidavit and other documents in the court of undersigned in which they stated that they intend to solemnized marriage within three calendar months.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 27-07-16. The objection received after 27-07-16 will not be entertained and marriage will be registered accordingly.

Issued today on 25-06-2016 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub Divisional Magistrate,
Hamirpur (H.P.).*

**In the Court of Ms. Kritika Kulhari, IAS, Marriage Officer-cum-Sub Divisional Magistrate,
Hamirpur, Himachal Pradesh**

In the matter of :

1. Ankit Kumar aged 29 years s/o Shri Surjeet Singh, r/o Ward No. 2, Nagar Panchayat Daulatpur Chowk, Tehsil Amb, District Una at present RBO SBI Gurukul Mall Hamirpur,
2. Shashi Bala aged 28 years d/o Shri Julfi Ram, r/o Ward No. 2, Village Raipur, PO Marwari, Tehsil Amb, District Una (H.P.) . . . *Applicants.*

Versus

General Public

Subject:—Notice of the Intended Marriage.

Ankit Kumar and Shashi Bala have filed an application u/s 16 of Special Marriage Act, 1954 alongwith affidavits and other documents in the court of undersigned in which they stated that they solemnized marriage on 28th November, 2015.

Therefore, the General Public is hereby informed through this notice that any person who has any objection for this marriage can file the objection personally or in writing before this court on or before 25-07-16. The objection received after 25-07-16 will not be entertained and marriage will be registered accordingly.

Issued today on 25-06-2016 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub Divisional Magistrate,
Hamirpur (H.P.).*

ब अदालत नायब तहसीलदार व अख्यारात सहायक समाहर्ता द्वितीय श्रेणी एवं कार्यकारी दण्डाधिकारी,
तहसील धर्मशाला, जिला कांगड़ा

श्री गुरुदत शर्मा

बनाम

आम जनता

विषय.—प्रार्थना—पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

नोटिस बनाम आम जनता।

श्री गुरुदत शर्मा पुत्र श्री तिरथ राम शर्मा, निवासी श्याम नगर, तहसील धर्मशाला, जिला कांगड़ा ने इस अदालत में शापथ—पत्र सहित मुकद्दमा दायर किया है कि उसके पुत्र नाम अक्षय शर्मा की जन्म दिनांक 26-11-1992 है परन्तु एम० सी० धर्मशाला में जन्म पंजीकृत न है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को उपरोक्त बच्चे अक्षय शर्मा की जन्म पंजीकृत किये जाने बारे कोई एतराज हो तो वह अपना एतराज हमारी अदालत में दिनांक 13-8-16 को असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा मुताबिक शपथ—पत्र जन्म तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 25-6-16 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
धर्मशाला।

मुकदमा : इन्द्राज जन्म तिथि

तारीख पेशी : 16-07-2016

तिलक राज रैना पुत्र जैसी राम, निवासी गगल, डा० लदवाड़ा, तहसील शाहपुर, जिला कांगड़ा, हिं0 प्र0 ।

बनाम

1. आम जनता ।
2. सचिव, ग्राम पंचायत मकड़ोटी ।

विषय.—बाबत इन्द्राज जन्म तिथि अधीन जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

प्रार्थी तिलक राज रैना पुत्र जैसी राम, निवासी गगल, डा० लदवाड़ा, तहसील शाहपुर ने प्रार्थना—पत्र मय हल्किया व्यान इस आशय से गुजारा है कि उसकी पुत्री स्वाती रैना का जन्म दिनांक 08-11-1992 को हुआ है परन्तु अज्ञानतावश उसका इन्द्राज सम्बन्धित ग्राम पंचायत मकड़ोटी के रिकार्ड में दर्ज न करवाया जा सका है ।

अतः इस इश्तहार के माध्यम से आम जनता व सचिव, ग्राम पंचायत मकड़ोटी को सूचित किया जाता है कि प्रार्थी की पुत्री की जन्म तिथि को सम्बन्धित ग्राम पंचायत मकड़ोटी के रिकार्ड में दर्ज करवाने बारे यदि किसी को कोई एतराज / उजर हो तो वह दिनांक 16-07-2016 को दोपहर बाद 2 बजे इस अदालत में असालतन या वकालतन हाजिर आकर अपना पक्ष रख सकता है । हाजिर न आने की सूरत में निर्धारित तिथि के बाद किसी भी प्रकार का कोई भी दावा स्वीकार्य न होगा और प्रार्थी की पुत्री की जन्म तिथि दर्ज करने बारे आदेश पारित कर दिए जाएंगे ।

मोहर ।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी,
शाहपुर ।

ब अदालत कार्यकारी दण्डाधिकारी शाहपुर, जिला कांगड़ा, हिं0 प्र0

मुकदमा : इन्द्राज जन्म तिथि

तारीख पेशी : 16-07-2016

तिलक राज रैना पुत्र जैसी राम, निवासी गगल, डा० लदवाड़ा, तहसील शाहपुर, जिला कांगड़ा, हिं0 प्र0 ।

बनाम

1. आम जनता ।
2. सचिव, ग्राम पंचायत मकड़ोटी ।

विषय.—बाबत इन्द्राज जन्म तिथि अधीन जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

प्रार्थी तिलक राज रैना पुत्र जैसी राम, निवासी गगल, डा० लदवाड़ा, तहसील शाहपुर ने प्रार्थना—पत्र मय हल्किया व्यान इस आशय से गुजारा है कि उसके पुत्र निशांत रैना का जन्म दिनांक 30-09-1991 को हुआ है परन्तु अज्ञानतावश उसका इन्द्राज सम्बन्धित ग्राम पंचायत मकड़ोटी के रिकार्ड में दर्ज न करवाया जा सका है ।

अतः इस इश्तहार के माध्यम से आम जनता व सचिव, ग्राम पंचायत मकड़ोटी को सूचित किया जाता है कि प्रार्थी के पुत्र की जन्म तिथि को सम्बन्धित ग्राम पंचायत मकड़ोटी के रिकार्ड में दर्ज करवाने बारे यदि किसी को कोई एतराज/उजर हो तो वह दिनांक 16-07-2016 को दोपहर बाद 2 बजे इस अदालत में असालतन या वकालतन हाजिर आकर अपना पक्ष रख सकता है। हाजिर न आने की सूरत में निर्धारित तिथि के बाद किसी भी प्रकार का कोई भी दावा स्वीकार्य न होगा और प्रार्थी के पुत्र की जन्म तिथि दर्ज करने बारे आदेश पारित कर दिए जाएंगे।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
शाहपुर।

ब अदालत कार्यकारी दण्डाधिकारी शाहपुर, जिला कांगड़ा, हिं0 प्र0

मुकदमा : इन्द्राज जन्म तिथि

तारीख पेशी : 16-07-2016

रमेश चन्द पुत्र अर्मी चन्द, निवासी रजोल, तहसील शाहपुर, जिला कांगड़ा, हिं0 प्र0

बनाम

1. आम जनता।
2. सचिव, ग्राम पंचायत रजोल।

विषय.—बाबत इन्द्राज जन्म तिथि अधीन जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

प्रार्थी रमेश चन्द पुत्र अर्मी चन्द, निवासी रजोल, तहसील शाहपुर ने प्रार्थना—पत्र मय हल्फिया व्यान इस आशय से गुजारा है कि उसके पुत्र निर्भय नरयाल, निवासी रजोल का जन्म दिनांक 28-10-1995 को हुआ है परन्तु अज्ञानतावश उसका इन्द्राज सम्बन्धित ग्राम पंचायत रजोल के रिकार्ड में दर्ज न करवाया जा सका है।

अतः इस इश्तहार के माध्यम से आम जनता व सचिव ग्राम पंचायत रजोल को सूचित किया जाता है कि प्रार्थी के पुत्र की जन्म तिथि को सम्बन्धित ग्राम पंचायत रजोल के रिकार्ड में दर्ज करवाने बारे यदि किसी को कोई एतराज/उजर हो तो वह दिनांक 16-07-2016 को दोपहर बाद 2 बजे इस अदालत में असालतन या वकालतन हाजिर आकर अपना पक्ष रख सकता है। हाजिर न आने की सूरत में निर्धारित तिथि के बाद किसी भी प्रकार का कोई भी दावा स्वीकार्य न होगा और प्रार्थी के पुत्र की जन्म तिथि दर्ज करने बारे आदेश पारित कर दिए जाएंगे।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
शाहपुर।

ब अदालत श्री गिरजेश चौहान, सहायक समाहर्ता प्रथम श्रेणी, शाहपुर, जिला कांगड़ा, हिं0 प्र0

विषय.—मुकदमा तकसीम भूमि

तारीख पेशी : 22 जुलाई, 2016

श्री किशोरी लाल पुत्र श्री दितू निवासी सकोउ, तहसील शाहपुर, जिला कांगड़ा, हिं0 प्र0

बनाम

वुधी सिंह, विजय कुमार पुत्रान व मोनिका देवी, निशा देवी पुत्रियां व रतनी देवी पत्नी स्व0 श्री देश राज, ओंकार सिंह, अशोक कुमार पुत्रान होश्यार सिंह, निवासीगण सकोउ, तहसील शाहपुर, जिला कांगड़ा।

मुकदमा बाबत तकसीम भूमि खाता नं0 09, खतौनी नं0 22 ता 39, खसरा कित्ता 26, रकबा तादादी 02-41-37 है० वाक्य महाल सकोउ, मौजा रेहलू, तहसील शाहपुर, जिला कांगड़ा, हिं0 प्र0।

उपरोक्त विषय से संबंधित तकसीम भूमि की मिसल अधोहस्ताक्षरी के पास विचाराधीन है जिसमें उपरोक्त प्रतिवादीगण को इस अदालत द्वारा समन जारी हुए परन्तु समन बिना तामील के प्राप्त हुए। इसलिए इस अदालत को विश्वास हो चुका है कि उपरोक्त प्रतिवादीगण की तामील साधारण तरीके से नहीं हो सकती है। अतः इस इश्तहार राजपत्र द्वारा उपरोक्त प्रतिवादीगण को सूचित किया जाता है कि उपरोक्त विषय के संबंध में दिनांक 22 जुलाई, 2016 को दोपहर बाद 2 बजे इस अदालत में असालतन या वकालतन हाजिर आकर अपना पक्ष/एतराज/उजर पेश कर सकता है। हाजिरन आने की सूरत में एक तरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 23/6/16 को मेरे हस्ताक्षर व मोहर सहित इस अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/-
सहायक समाहर्ता प्रथम श्रेणी,
शाहपुर, जिला कांगड़ा, हिं0 प्र0।

ब अदालत श्री गिरजेश चौहान, कार्यकारी दण्डाधिकारी शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश

मुकदमा : विवाह पंजीकरण

तारीख पेशी : 16-07-2016

हीरा लाल पुत्र भीमी राम, निवासी शाहपुर, तहसील शाहपुर, जिला कांगड़ा हिमाचल प्रदेश

बनाम

- (1) आम जनता,
- (2) सचिव, ग्राम पंचायत शाहपुर।

विषय-प्रार्थना पत्र जेर धारा 8(4) के अन्तर्गत विवाह के पंजीकरण बारे।

उपरोक्त प्रार्थी ने प्रार्थना-पत्र मय हल्किया व्यान द्वारा अधिवक्ता श्री धीरज लगवाल इस आशय से गुजारा है कि उसकी शादी श्रीमती कुंता देवी पुत्री केर सिंह, निवासी ढांड धार, डां कलेल, तहसील चुराह, जिला चम्बा के साथ दिनांक 22-01-2009 को हिन्दू रीति रिवाज से हुई है परन्तु गलती के कारण उसने शादी का पंजीकरण ग्राम पंचायत शाहपुर के रिकार्ड में नहीं करवाया है। जिसे प्रार्थी अब दर्ज करवाना चाहता है।

अतः इस सम्बन्ध में कुंता देवी की माता व पिता केर सिंह, निवासी ढांड धार, डां कलेल, तहसील चुराह, जिला चम्बा व सचिव, ग्राम पंचायत शाहपुर व आम जनता को इस राजपत्र इश्तहार द्वारा सूचित किया जाता है कि प्रार्थी की शादी के पंजीकरण बारे यदि किसी व्यक्ति को कोई उजर या एतराज हो तो वह दिनांक 16-07-2016 को असालतन या वकालतन इस अदालत में हाजिर आकर अपने उजर/एतराज पेश कर सकता है। हाजिर न आने की सूरत में नियमानुसार शादी पंजीकरण के आदेश पारित कर दिये जायेंगे।

आज दिनांक 23-6-16 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

गिरजेश चौहान
कार्यकारी दण्डाधिकारी,
शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत श्री नारायण सिंह चौहान, कार्यकारी दण्डाधिकारी (तहसीलदार) बद्दी, जिला सोलन, हि० प्र०

मुकदमा नं० : 28 / 2016

तारीख रजुआ : 23-05-2016

श्री दर्शन सिंह पुत्र श्री मोहिन्द्र सिंह, निवासी ग्राम लण्डेवाल, तहसील बद्दी, जिला सोलन, हि० प्र० वादी।

बनाम

आम जनता बजरिया : ग्राम पंचायत/नगर परिषद्, हरीपुर सण्डोली, तहसील बद्दी, जिला सोलन (हि० प्र०) प्रतिवादी।

इश्तहार जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम 1969.

इश्तहार बनाम आम जनता।

हरगाह उपरोक्त मुकदमा उनवान वाला में हर आम/खास आम जनता व जन-साधारण को बजरिया इश्तहार सूचित किया जाता है कि श्री दर्शन सिंह पुत्र श्री मोहिन्द्र सिंह, निवासी ग्राम लण्डेवाल, तहसील बद्दी, जिला सोलन, हि० प्र० वादी ने इस अदालत में अपने लड़के हरदेव सिंह के जन्म इन्द्राज बारे प्रार्थना-पत्र जेरे धारा 13(3) जन्म एवं मृत्यु अधिनियम, 1969 के अन्तर्गत अपने व्यान हलिफ्या सहित दायर किया है कि उसकी धर्मपत्नी श्रीमती प्रकाश कौर ने दिनांक 13-01-1991 को एक बच्चे को जन्म दिया था जिसका किसी कारणवश वह ग्राम पंचायत/नगर परिषद् हरीपुर सण्डोली के रिकार्ड में जन्म इन्द्राज नहीं करवा सके थे। जिसका अब वह ग्राम पंचायत/नगर परिषद् हरीपुर सण्डोली, तहसील बद्दी, जिला सोलन, हि० प्र० में जन्म इन्द्राज करवाना चाहते हैं। यदि किसी को उपरोक्त की जन्म तिथि का इन्द्राज ग्राम पंचायत/नगर परिषद् हरीपुर सण्डोली, तहसील बद्दी के रिकार्ड में दर्ज होने बारे कोई एतराज हो तो वह दिनांक 18-07-2016 या इससे पूर्व अपना एतराज लिखित या मौखिक रूप से इस अदालत में पेश कर सकते हैं। अन्यथा वादी व अन्य गवाहन द्वारा आवेदन के साथ प्रस्तुत किये व्यान हलिफ्यानामा व कलमबंद किये गये व्यानात के आधार पर उपरोक्त की जन्म तिथि का इन्द्राज किये जाने के आदेश पारित कर दिये जायेंगे तथा बाद गुजरने मियाद किसी का कोई भी एतराज काबले समायत न होगा।

आज दिनांक 17-06-2016 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/-
कार्यकारी दण्डाधिकारी,
बद्दी, जिला सोलन, हि० प्र०।

ब अदालत श्री नारायण सिंह चौहान, कार्यकारी दण्डाधिकारी (तहसीलदार) बद्दी, जिला सोलन, हि० प्र०

मुकदमा नं० : 27 / 2016

तारीख रजुआ : 23-05-2016

श्री दर्शन सिंह पुत्र श्री मोहिन्द्र सिंह, निवासी ग्राम लण्डेवाल, तहसील बद्दी, जिला सोलन, हि० प्र० वादी।

बनाम

आम जनता बजरिया : ग्राम पंचायत/नगर परिषद्, हरीपुर सण्डोली, तहसील बद्दी, जिला सोलन (हि० प्र०) प्रतिवादी।

इश्तहार जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम 1969.

इश्तहार बनाम आम जनता।

हरगाह उपरोक्त मुकदमा उनवान वाला में हर आम/खास आम जनता व जन-साधारण को बजरिया इश्तहार सूचित किया जाता है कि श्री दर्शन सिंह पुत्र श्री मोहिन्द्र सिंह, निवासी ग्राम लण्डेवाल, तहसील बद्दी, जिला सोलन, हि० प्र० वादी ने इस अदालत में अपने लड़के मेजर सिंह के जन्म इन्द्राज बारे प्रार्थना-पत्र जेरे धारा 13(3) जन्म एवं मृत्यु अधिनियम, 1969 के अन्तर्गत अपने व्यान हल्किया सहित दायर किया है। कि उसकी धर्मपत्नी श्रीमती प्रकाश कौर ने दिनांक 18-08-1989 को एक बच्चे को जन्म दिया था जिसका किसी कारणवश वह ग्राम पंचायत/नगर परिषद् हरीपुर सण्डोली के रिकार्ड में जन्म इन्द्राज नहीं करवा सके थे। जिसका अब वह ग्राम पंचायत/नगर परिषद् हरीपुर सण्डोली, तहसील बद्दी, जिला सोलन, हि० प्र० में जन्म इन्द्राज करवाना चाहते हैं। यदि किसी को उपरोक्त की जन्म तिथि का इन्द्राज ग्राम पंचायत/नगर परिषद् हरीपुर सण्डोली, तहसील बद्दी के रिकार्ड में दर्ज होने बारे कोई एतराज हो तो वह दिनांक 18-07-2016 या इससे पूर्व अपना एतराज लिखित या मौखिक रूप से इस अदालत में पेश कर सकते हैं। अन्यथा वादी व अन्य गवाहन द्वारा आवेदन के साथ प्रस्तुत किये व्यान हल्कियानामा व कलमबंद किये गये व्यानात के आधार पर उपरोक्त की जन्म तिथि का इन्द्राज किये जाने के आदेश पारित कर दिये जायेंगे तथा बाद गुजरने मियाद किसी का कोई भी एतराज काबले समायत न होगा।

आज दिनांक 17-06-2016 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/-
कार्यकारी दण्डाधिकारी,
बद्दी, जिला सोलन, हि० प्र०।

ब अदालत श्री नारायण सिंह चौहान, कार्यकारी दण्डाधिकारी (तहसीलदार) बद्दी, जिला सोलन, हि० प्र०

मुकदमा नं० : 24 / 2016

तारीख रजुआ : 18-05-2016

श्रीमती सुरजीत कौर पत्नी स्व० श्री राज कुमार, निवासी ग्राम किशनपुरा, तहसील बद्दी, जिला सोलन, हि० प्र० वादिया।

बनाम

आम जनता बजरिया : ग्राम पंचायत/नगर परिषद्, किशनपुरा, तहसील बद्दी, जिला सोलन (हि० प्र०)
प्रतिवादी ।

इश्तहार जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम 1969.

इश्तहार बनाम आम जनता ।

हरगाह उपरोक्त मुकदमा उनवान वाला में हर आम/खास आम जनता व जन-साधारण को बजरिया इश्तहार सूचित किया जाता है कि श्रीमती सुरजीत कौर पत्नी स्व० श्री राज कुमार, निवासी ग्राम किशनपुरा, तहसील बद्दी, जिला सोलन, हि० प्र० वादिनी ने इस अदालत में अपनी लड़की ईकमप्रित के जन्म इन्द्राज बारे प्रार्थना-पत्र जेरे धारा 13(3) जन्म एवं मृत्यु अधिनियम, 1969 के अन्तर्गत अपने व्यान हल्किया सहित दायर किया है। कि उसके पति स्व० श्री राज कुमार के सिकम से उसने दिनांक 08-12-2012 को एक लड़की को जन्म दिया था। जिसका किसी कारणवश वह ग्राम पंचायत/नगर परिषद् किशनपुरा के रिकार्ड में जन्म इन्द्राज नहीं करवा सके थे। जिसका अब वह ग्राम पंचायत/नगर परिषद् किशनपुरा, तहसील बद्दी, जिला सोलन, हि० प्र० में जन्म इन्द्राज करवाना चाहते हैं। यदि किसी को उपरोक्त की जन्म तिथि का इन्द्राज ग्राम पंचायत/नगर परिषद् किशनपुरा, तहसील बद्दी के रिकार्ड में दर्ज होने बारे कोई एतराज हो तो वह दिनांक 13-07-2016 या इससे पूर्व अपना एतराज लिखित या मौखिक रूप से इस अदालत में पेश कर सकते हैं। अन्यथा वादी व अन्य गवाहन द्वारा आवेदन के साथ प्रस्तुत किये व्यान हल्कियानामा व कलमबंद किये गये व्यानात के आधार पर उपरोक्त की जन्म तिथि का इन्द्राज किये जाने के आदेश पारित कर दिये जायेंगे तथा बाद गुजरने मियाद किसी का कोई भी एतराज काबले समायत न होगा।

आज दिनांक 13-06-2016 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर ।

हस्ताक्षरित/-
कार्यकारी दण्डाधिकारी,
बद्दी, जिला सोलन, हि० प्र० ।

व अदालत श्री नारायण सिंह चौहान, कार्यकारी दण्डाधिकारी (तहसीलदार) बद्दी, जिला सोलन, हि० प्र०

मुकदमा नं० : 23 / 2016

तारीख रजुआ : 18-05-2016

श्री सरवन पुत्र श्री सीता राम, निवासी ग्राम गुल्लरवाला, तहसील बद्दी, जिला सोलन, हि० प्र० वादी ।

बनाम

आम जनता बजरिया : ग्राम पंचायत/नगर परिषद्, गुल्लरवाला, तहसील बद्दी, जिला सोलन (हि० प्र०)
प्रतिवादी ।

इश्तहार जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम 1969.

इश्तहार बनाम आम जनता ।

हरगाह उपरोक्त मुकदमा उनवान वाला में हर आम/खास आम जनता व जन-साधारण को बजरिया इश्तहार सूचित किया जाता है कि श्री सरवन पुत्र श्री सीता राम, निवासी ग्राम गुल्लरवाला, तहसील बद्दी, जिला सोलन, हि० प्र० वादी ने इस अदालत में अपनी माता स्व० श्रीमती जीतो देवी पत्नी स्व० श्री सीता राम की मृत्यु इन्द्राज बारे प्रार्थना-पत्र जेरे धारा 13(3) जन्म एवं मृत्यु अधिनियम, 1969 के अन्तर्गत अपने व्यान हल्किया सहित दायर किया है कि उसकी माता स्व० श्रीमती जीतो देवी की दिनांक 29-08-2010 को मृत्यु हो गई थी। जिसका किसी कारणवश वह ग्राम पंचायत/नगर परिषद् गुल्लरवाला के रिकार्ड में मृत्यु इन्द्राज नहीं करवा सके थे। जिसका अब वह ग्राम पंचायत/नगर परिषद् गुल्लरवाला, तहसील बद्दी, जिला सोलन, हि० प्र० में मृत्यु इन्द्राज करवाना चाहते हैं। यदि किसी को उपरोक्त की मृत्यु तिथि का इन्द्राज ग्राम पंचायत/नगर परिषद् गुल्लरवाला, तहसील बद्दी के रिकार्ड में दर्ज होने बारे कोई एतराज हो तो वह दिनांक 13-07-2016 या इससे पूर्व अपना एतराज लिखित या मौखिक रूप से इस अदालत में पेश कर सकते हैं। अन्यथा वादी व अन्य गवाहन द्वारा आवेदन के साथ प्रस्तुत किये व्यान हल्कियानामा व कलमबंद किये गये व्यानात के आधार पर उपरोक्त की मृत्यु तिथि का इन्द्राज किये जाने के आदेश पारित कर दिये जायेंगे तथा बाद गुजरने मियाद किसी का कोई भी एतराज काबले समायत न होगा।

आज दिनांक 13-06-2016 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/-
कार्यकारी दण्डाधिकारी,
बद्दी, जिला सोलन, हि० प्र०।

व अदालत श्री नारायण सिंह चौहान, कार्यकारी दण्डाधिकारी (तहसीलदार) बद्दी, जिला सोलन, हि० प्र० मुकदमा नं० : 26 / 2016

तारीख रजुआ : 19-05-2016

श्री रणजीत सिंह पुत्र श्री रामा नन्द, निवासी ग्राम व डा० मानपुरा, तहसील बद्दी, जिला सोलन, हि० प्र० वादी।

बनाम

आम जनता बजरिया : ग्राम पंचायत/नगर परिषद्, मानपुरा, तहसील बद्दी, जिला सोलन (हि० प्र०) प्रतिवादी।

इश्तहार जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम 1969.

इश्तहार बनाम आम जनता।

हरगाह उपरोक्त मुकदमा उनवान वाला में हर आम/खास आम जनता व जन-साधारण को बजरिया इश्तहार सूचित किया जाता है कि श्री रणजीत सिंह पुत्र श्री रामा नन्द, निवासी ग्राम व डा० मानपुरा, तहसील बद्दी, जिला सोलन, हि० प्र० वादी ने इस अदालत में अपने लड़के उदय शर्मा के जन्म इन्द्राज बारे प्रार्थना-पत्र जेरे धारा 13(3) जन्म एवं मृत्यु अधिनियम, 1969 के अन्तर्गत अपने व्यान हल्किया सहित दायर किया है कि उसकी धर्मपत्नी श्रीमती ममता देवी ने दिनांक 13-06-2004 को एक बच्चे को जन्म दिया था। जिसका किसी कारणवश वह ग्राम पंचायत/नगर परिषद् मानपुरा के रिकार्ड में जन्म इन्द्राज नहीं करवा सके थे। जिसका अब वह ग्राम पंचायत/नगर परिषद् मानपुरा, तहसील बद्दी, जिला सोलन, हि० प्र० के रिकार्ड

मैं जन्म इन्द्राज करवाना चाहते हैं। यदि किसी को उपरोक्त की जन्म तिथि का इन्द्राज ग्राम पंचायत/नगर परिषद् मानपुरा, तहसील बद्दी के रिकार्ड में दर्ज होने बारे कोई एतराज हो तो वह दिनांक 15-07-2016 या इससे पूर्व अपना एतराज लिखित या मौखिक रूप से इस अदालत में पेश कर सकते हैं। अन्यथा वादी व अन्य गवाहन द्वारा आवेदन के साथ प्रस्तुत किये व्यान हल्फियानामा व कलमबंद किये गये व्यानात के आधार पर उपरोक्त की जन्म तिथि का इन्द्राज किये जाने के आदेश पारित कर दिये जायेंगे तथा बाद गुजरने मियाद किसी का कोई भी एतराज काबले समायत न होगा।

आज दिनांक 15-06-2016 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
बद्दी, जिला सोलन, हि० प्र०।

सार्वजनिक सूचना

मैं, मीना पुत्री स्वर्गीय श्री सरनदास, ब्लाक नं० 23, सैट नं० 15, फेस III नजदीक प्रदूषण बोर्ड, बी०सी०एस०, न्यू शिमला, हि० प्र०। मैं, मीना पत्नी गोपाल चक्रवर्ती, मैंने अपना नाम मीना चक्रवर्ती से बदलकर मीना कर दिया है।

मीना
पुत्री स्वर्गीय श्री सरनदास,
ब्लाक नं० 23, सैट नं० 15, फेस III
नजदीक प्रदूषण बोर्ड, बी०सी०एस०, न्यू शिमला, हि० प्र०।

सार्वजनिक सूचना

मैं, अभिमन्यू चौहान पुत्र श्री गोपाल, ब्लाक नं० 23, सैट नं० 15, फेस 3 नजदीक प्रदूषण बोर्ड, बी०सी०एस०, न्यू शिमला, हि० प्र०। मैंने अपना नाम अभिमन्यू चक्रवर्ती से बदलकर अभिमन्यू चौहान कर दिया है।

अभिमन्यू चौहान
पुत्र श्री गोपाल,
ब्लाक नं० 23, सैट नं० 15, फेस 3
नजदीक प्रदूषण बोर्ड, बी०सी०एस०, न्यू शिमला, हि० प्र०।

